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**Original Citation.**

Division of Classification

In your reply refer to  
C. D. No. 37099

**POST OFFICE DEPARTMENT**  
**THIRD ASSISTANT POSTMASTER GENERAL**  
**Washington 25, D. C.**

1

September 11, 1943.

Publisher, "Esquire",  
919 N. Michigan Avenue,  
Chicago, Illinois.

Sir:

Pursuant to the rules of practice adopted and issued by the Postmaster General April 21, 1942, Order No. 17493, herewith enclosed, you are hereby notified that, in accordance with 31 Stat. 1107 (39 U. S. C. sec. 232), you will be granted a hearing in Room 3237 of the Office of the Postmaster General, Washington, D. C., at 10:00 A. M., September 28, 1943, to show cause why the authorization of the admission of the "Esquire" magazine to the second-class of mail matter, and the accordance to the "Esquire" magazine of second-class mailing privileges, under 20 Stat. 359 (39 U. S. C. secs. 224 and 226), should not be suspended, annulled, or revoked, upon the grounds:

2

(a) That it is nonmailable within the meaning of 35 Stat. 1129 (18 U. S. C. 334), in that issues dated January, February, March, April, May, June, July, August, and September, 1943, have contained matters described and portrayed as set forth in Exhibit "A" attached hereto of an obscene, lewd and lascivious character; and other matter of a similar or related nature;

3

*Original Citation.*

and upon the further ground:

- 4 (b) That because of the inclusion of such matter in the publication it has not fulfilled the qualifications of second-class mailing privileges established by the Fourth Condition of 20 Stat. 359 (39 U. S. C. sec. 226);

and upon the further ground:

- 5 (c) That it is not a mailable newspaper or other mailable periodical publication of the second class of mailable matter as it, in a generally uniform and systematic manner, publishes nonmailable matter in that in issues dated January, February, March, April, May, June, July, August, and September, 1943, it has included matter such as is cited in Paragraph (a) hereof.

Failure of the publication to make appearance at the time and place fixed for hearing will be deemed to be a waiver of the right to a hearing and as authorizing the Postmaster General forthwith to issue an order suspending, annulling, or revoking the second-class mailing privileges.

Yours very truly,

6

(signed) RAMSEY S. BLACK,  
Third Assistant Postmaster General.

Enclosure—Rules of Practice.  
By Registered Mail.

# EXHIBIT A ANNEXED TO ORIGINAL CITATION.

Division of Classification

In your reply refer to  
C. D. No.

POST OFFICE DEPARTMENT  
THIRD ASSISTANT POSTMASTER GENERAL  
Washington

7

## EXHIBIT A

TO ACCOMPANY LETTER DATED September 11, 1943,  
TO PUBLISHER "ESQUIRE" MAGAZINE, CHICAGO,  
ILLINOIS, IN CONNECTION WITH HEARING ON  
REVOCATION OF SECOND-CLASS MAILING PRIVI-  
LEGE.

8

### *January, 1943 issue*

Pages 83 and 119. Story entitled "Those Star and Garter  
Blues."

Page 97. Picture entitled "January."

Page 98. Picture entitled "February."

Page 99. Picture entitled "March."

Page 100. Picture entitled "April."

Page 101. Picture entitled "May."

Page 102. Picture entitled "June."

Page 103. Picture entitled "July."

Page 106. Picture entitled "October."

Page 107. Picture entitled "November."

Page 108. Picture entitled "December."

9

### *February, 1943 issue*

Page 34. Picture entitled "The Varga Girl."

### *March, 1943 issue*

Page 36. Picture entitled "The Varga Girl."

***Exhibit A Annexed to Original Citation.***

***April, 1943 issue***

10 **Page 38. Picture and poem entitled "Peace, It's Wonderful."**

***May, 1943 issue***

**Page 38. Picture entitled "The Varga Girl."**

**Pages 86 and 87. Pictures 29, 30, 31 and 32 and accompanying text of "The Exploits of Esky."**

***June, 1943 issue***

**Page 34. Picture entitled "The Varga Girl."**

***July, 1943 issue***

11

**Page 76. Picture entitled "Broadway for the Boys."**

**Page 146. Pictures bearing an advertisement of "Eskey buy-products."**

***August, 1943 issue***

**Page 10. Letter to editor bearing caption "Considered Opinion."**

**Page 38. Picture entitled "The Varga Girl."**

**Page 89. Picture bearing statement "Paste Your Face Here."**

12

***September, 1943 issue***

**Page 38. Picture entitled "The Varga Girl."**

**Amended Citation:**

Division of Classification

In your reply refer to  
C. D. No. 37099

13

**POST OFFICE DEPARTMENT  
THIRD ASSISTANT POSTMASTER GENERAL  
Washington**

October 4, 1943.

Publisher, "Esquire",  
919 N. Michigan Avenue,  
Chicago, Illinois.

Sir:

14

Pursuant to Rule III (e) of the Rules of Practice adopted and issued by the Postmaster General April 21, 1942, Order No. 17493, and in accordance with the agreement had by your editor and vice-president with counsel for the Post Office Department when continuances of the date of the hearing from September 28 and October 12, 1943, to October 19, 1943, were granted you at your request, you are hereby notified that the rule to show cause dated September 11, 1943, heretofore served upon you is hereby amended to read as follows:

In accordance with 31 Stat. 1107 (39 U. S. C. sec. 232), you will be granted a hearing in Room 3237 of the Office of the Postmaster General, Washington, D. C., at 10:00 a. m., October 19, 1943, to show cause why the authorization of the admission of the "Esquire" magazine to the second-class of mail matter, and the accordance to the "Esquire" magazine of second-class mailing privileges, under 20 Stat. 359

15

*Amended Citation.*

(39 U. S. C. secs. 224 and 226), should not be suspended, annulled, or revoked, upon the grounds:

16

- (a) That it is nonmailable within the meaning of 35 Stat. 1129 (18 U. S. C. 334), in that issues dated January, February, March, April, May, June, July, August, September, October, and November, 1943, have contained matters described and portrayed as set forth in Exhibit "A" attached hereto of an obscene, lewd and lascivious character; and other matter of a similar or related nature;

and upon the further ground:

17

- (b) That because of the inclusion of such matter in the publication it has not fulfilled the qualifications of second-class mailing privileges established by the Fourth Condition of 20 Stat. 359 (39 U. S. C. sec. 226);

and upon the further ground:

18

- (c) That it is not a mailable newspaper or other mailable periodical publication of the second class of mailable matter as if, in a generally uniform and systematic manner, publishes nonmailable matter in that in issues dated January, February, March, April, May, June, July, August, September, October, and November, 1943, it has included matter such as is cited in Paragraph (a) hereof.

Failure of the publication to make appearance at the time and place fixed for hearing will be deemed to be a



***Amended Citation.***

waiver of the right to a hearing and as authorizing the Postmaster General forthwith to issue an order suspending, annulling, or revoking the second-class mailing privileges.

19

**Yours very truly,**

(signed) **RAMSEY S. BLACK**  
**Third Assistant Postmaster General.**

**Enclosure—Rules of Practice.**  
**By Registered Mail.**

20

21

**EXHIBIT A ANNEXED TO AMENDED CITATION.**

Division of Classification

In your reply refer to  
C. D. No.

22

**POST OFFICE DEPARTMENT  
THIRD ASSISTANT POSTMASTER GENERAL  
Washington****EXHIBIT A****TO ACCOMPANY LETTER DATED October 4, 1943, TO  
PUBLISHER "ESQUIRE" MAGAZINE, CHICAGO, ILLI-  
NOIS, IN CONNECTION WITH HEARING ON REVO-  
CATION OF SECOND-CLASS MAILING PRIVILEGE.**

23

*January, 1943 issue***Pages 83 and 119. Story entitled "Those Star and Garter  
Blues."****Page 97. Picture entitled "January."****Page 98. Picture entitled "February."****Page 99. Picture entitled "March."****Page 100. Picture entitled "April."****Page 101. Picture entitled "May."****Page 102. Picture entitled "June."****Page 103. Picture entitled "July."****Page 104. Picture and verse entitled "August."**

24

**Page 105. Picture and verse entitled "September."****Page 106. Picture entitled "October."****Page 107. Picture entitled "November."****Page 108. Picture entitled "December."***February, 1943 issue***Page 34. Picture entitled "The Varga Girl."**

*Exhibit A Annexed to Amended Citation.*

*March, 1943 issue*

Page 36. Picture entitled "The Varga Girl."

25

*April, 1943 issue*

Page 38. Picture and poem entitled "Peace, It's Wonderful."

*May, 1943 issue*

Page 38. Picture entitled "The Varga Girl."

Pages 86 and 87. Pictures 29, 30, 31 and 32 and accompanying text of "The Exploits of Esky".

*June, 1943 issue*

26

Page 34. Picture entitled "The Varga Girl."

*July, 1943 issue*

Page 76. Picture entitled "Broadway for the Boys."

Page 146. Pictures bearing an advertisement of "Eskey buy-products."

*August, 1943 issue*

Page 10. Letter to editor bearing caption "Considered Opinion."

27

Page 38. Picture entitled "The Varga Girl."

Page 89. Picture bearing statement "Paste Your Face Here."

*September, 1943 issue*

Page 38. Picture entitled "The Varga Girl."

*October, 1943 issue*

Pages 43-44. The Varga Girl.

Page 49. Cartoon.

Page 93. "Goldbricking With Esquire." Items 2, 3, and 17.

*November, 1943 issue*

Page 46. The Varga Girl, picture and verse.

Page 66. Cartoon "It's no use, Sarg.—we're outnumbered—  
Yipppee!"

Page 73. Picture "Golden Mould."

Pages 94-95. "Goldbricking With Esquire."

Item 4, "The corporal was going home on a  
furlough," etc.;

Item 15, "He: I see your husband has been  
promoted", etc.;

Item 24, "Home on furlough", etc.;

Item 27, "The beautiful Army hostess—", etc.;

Item 28, "Have a good time—", etc.;

Item 30, "Buck Private: 'I'm afraid we can't  
have much fun tonight—", etc.;

Item 31, "Pardon me Miss,—", etc.;

Item 35, Cartoon;

Item 36, "A beautiful young lady went for a  
swim—", etc.

**Respondent's Answer to Original and Amended Citations.**

**BEFORE THE  
POST OFFICE DEPARTMENT  
C. D. No. 37099**

31

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**IN THE MATTER**

**OF THE**

**SECOND-CLASS MAILING PRIVILEGES OF THE MAGAZINE,  
ESQUIRE, PUBLISHED BY ESQUIRE, INC.**

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32

Respondent, ESQUIRE, INC. (hereinafter referred to as respondent) by its attorneys, CRAVATH, de GEERSDORFF, SWAINE & WOOD, for its answer to the original and amended orders to show cause citations (hereinafter called citations) in the above-entitled matter, dated September 11 and October 4, 1943, respectively, and signed by Ramsey S. Black, Third Assistant Postmaster-General, alleges as follows:

1. Denies each and every statement of subparagraphs (a), (b) and (c) of each of said original and amended citations except that respondent admits that the issues of its magazine, ESQUIRE (hereinafter called the magazine), dated January, February, March, April, May, June, July, August, September, October and November of 1943 (hereinafter called the cited issues), respectively, contained among other material the matter specified in Exhibit A, annexed to each of said citations.

33

*Respondent's Answer to Original and Amended Citations.**For a First Complete Defense.*

34 2. On December 15, 1933, respondent applied for and received second-class mailing privileges for its monthly magazine, and has continued to use and enjoy said privileges uninterrupted for approximately ten years, that is, until September 13, 1943, when it was served with the original citation to show cause why its said privileges should not be suspended, annulled, or revoked. The October and November issues were mailed under second-class privileges without prejudice to their being included by the Postmaster-General in the amended citation herein.

35 3. Respondent is a Delaware corporation with its editorial, circulation, business, and production offices in Chicago, Illinois, and with its advertising offices in New York, N. Y., and has published the magazine regularly since December 15, 1933. During said period the magazine has been published each and every month.

36 4. Each issue of the magazine, including specifically the cited issues, bore and bears a date of issue and publication number, and the address of the publication office. At the present time the magazine is being printed at its aforesaid office in Chicago, Illinois, and all the cited issues were printed at Chicago, Illinois, although mailed out of both Chicago, Illinois, and New York, N. Y.

5. Each issue of the magazine, including the cited issues, is now and always has been formed of printed paper sheets without board, cloth, leather, or other substantial binding such as distinguishes printed books from periodical publications.



*Respondent's Answer to Original and Amended Citations.*

6. Each issue of the magazine since December 15, 1933, and including the cited issues, was, and future issues will be, originated and published for the dissemination of information of a public character, or matter devoted to literature, the sciences, arts, or some special industry. The magazine has had at all times since December 15, 1933, a legitimate list of subscribers and now has a legitimate list of subscribers numbering approximately 300,000 for each of the cited issues. 37

7. The magazine has never been and is not now designed primarily for advertising purposes or for free circulation or for circulation at nominal rates. The present yearly subscription rate and the yearly rate for the cited issues is and was \$5.00 per year for twelve issues in the United States. 38

8. Each of the cited issues of the magazine regularly contains from 150 to 200 pages of which approximately 65% is editorial content and the balance devoted to advertisements by recognized, reputable business concerns through the country. The magazine has a standard editorial formula followed throughout the cited issues which includes (a) from six to nine articles of current general interest and information, (b) several fiction short stories, (c) several articles on sports, (d) from one to three articles on interesting personalities, (e) a feature discussing trends in men's dress, (f) a number of regular departments, including correspondence from readers, notes about contributors, the lively arts, books, wearables, theatre, potables, edibles and sports, and (g) a number of regularly recurring features such as paintings, water colors, prints and photographs. Substantially all of the non-advertising material, i.e., edi- 39



*Respondent's Answer to Original and Amended Citations.*

torial content, contained in the cited issues is devoted to the dissemination of information of a public character.

40

9. Each article or feature is contributed by persons well known and highly respected in their special fields, and each cited issue of said magazine furnishes valuable information of a public character to its readers as well as matter devoted to literature, the sciences, arts, or some special industry.

10. An average of 700,000 of the cited issues of the magazine were sold and distributed either through the mail to subscribers (300,000) or through newsstands (400,000).

*For a Second Complete Defense*

41

11. Each and every item referred to in Exhibit A annexed to the original and amended citations isailable matter under the provisions of all applicable statutes.

12. None of the matter specified in Exhibit A annexed to the original and amended citations consists of non-mailable matter within the provisions of 18 U. S. C. 334 or any other applicable statute purporting to define non-mailable matter..

42

13. In none of the cited issues is there contained a single article feature or other item of non-mailable character.

14. In none of the cited issues is there included any matter of an obscene or lewd or lascivious or indecent or filthy nature. None of the matter specified in Exhibit A annexed to the original and amended citations is matter of an obscene or lewd or lascivious or indecent or filthy nature.

*Respondent's Answer to Original and Amended Citations.*

15. All matter published in the cited issues consists of matter which is in accord with and entirely sanctioned by the current standards of morality as accepted by the community generally and as reflected in the magazine, book, newspaper, advertising, screen, stage and other fields of communication and entertainment.

43

16. Material substantially identical with that now cited in the original and amended citations as violating the provisions of 18 U. S. C. 334 and as obscene or lewd or lascivious has been generally accepted since December 15, 1933, asailable matter of the second-class by the Post Office Department in respondent's magazine and throughout 1941 and the first seven months of 1942 such material has been heldailable second-class by specific rulings. Matter substantially identical with that now cited in the original and amended citations herein has likewise been accepted asailable matter by the Post Office Department in other magazines of unquestionable standing in the publishing field both in advertising and non-advertising material. Such acceptance is in accord with and reflects the current standards of morality of the community.

44

17. There is no basis, in fact or in law, to support any of the charges contained in the original or amended citations of non-mailability or of violation of 18 U. S. C. 334 or any other statute relating to the subject of obscenity or non-mailability.

45

*For a Third Complete Defense*

18. This proceeding is in violation of 39 U. S. C. 226 and is without any basis in law for the reason that the Post-

*Respondent's Answer to Original and Amended Citations.*

46 master-General herein is attempting to impose requirements in addition to those contained in or contemplated by the statutes as a condition precedent to the enjoyment of second-class mailing privileges.

19. The Congress of the United States has not committed to the Postmaster-General or to anyone else the discretion or province of determining what should be carried in the mails as second-class matter and what must be carried as matter of the third and fourth classes. It has reserved that power exclusively to itself.

47 20. The classifications for mailing and what constitutes second, third and fourth-class mail are fixed by statute and are exclusively within the powers of the Congress. It is not competent for the Postmaster-General to add anything to, or take anything away from, the statutes defining the second, third and fourth classes of mailing.

21. The power of the Postmaster-General is limited to merely identifying the matter as included within one or the other of the classifications set forth and defined by the statutes. It is not competent for the Postmaster-General to impose additional requirements beyond those specified in the statutes.

48 22. In so far as the Postmaster-General by these citations and in this proceeding seeks to impose additional requirements for second-class mailing privileges not set forth or contained in any of the statutes, the Postmaster-General exceeds his power and the procedure is unconstitutional and in violation of due process of law.

23. The requirements for second-class mailing privileges are defined by statute. The Postmaster-General has no pow-

*Respondent's Answer to Original and Amended Citations.*

er to alter in any way the provisions contained in said statute. Respondent having complied with all requirements for second-class mailing is entitled, as a matter of right, to the privilege of second-class mailing and is not limited to exercising the privilege merely in the discretion of the Postmaster-General.

49

*For a Fourth Complete Defense*

24. The Postmaster-General has no authority to revoke the second-class mailing privileges of respondent on the purported ground that the matter stated in the citations, contained in the cited issues of the magazine, was non-mailable under the provisions of 18 U. S. C. 334 or under any other provision of any other statute or law.

50

*For a Fifth Complete Defense*

25. Section 232 of Title 39 U. S. C. as sought to be administered by the Postmaster-General by the citations herein and by this entire proceeding to revoke respondent's second-class privileges is unconstitutional in that under the Post Office Department rules of practice governing such proceedings, as administered by the Postmaster-General, respondent is denied due process of law.

WHEREFORE, respondent prays:

51

A. That this Board:

1. Enter its findings:

(a) that there is no support whatever in fact or in law for the charges of obscenity and violation of

*Respondent's Answer to Original and Amended Citations.*

18 U. S. C. 334 specified in the original and amended citations.

52

(b) that the publication complies with all statutory requirements for second-class mailing privileges, and

2. Recommend to the Postmaster-General that this proceeding be dismissed and the second-class mailing privileges of respondent be continued in full force and effect, and

53

B. That the Postmaster-General, or his duly designated representative, issue an order dismissing the proceedings herein.

CRAVATH, de GERSDORFF, SWAINE & WOOD,  
Attorneys for respondent, ESQUIRE, INC.,  
Publisher of the magazine, ESQUIRE,  
15 Broad Street,  
New York, N. Y.  
616 Transportation Building,  
Washington, D. C.

54

**Postmaster General's Order Appointing Board.****POST OFFICE DEPARTMENT**

Washington 25, D. C.

October 14, 1943

55

**ORDER No. 22538**

A show-cause order dated September 11, 1943, which was amended on October 4 to include additional items and issues, having been prepared and duly transmitted by registered mail to Publishers, "Esquire," 919 North Michigan Avenue, Chicago, Illinois, calling upon said Publishers, "Esquire," to show cause at a hearing scheduled at 10:00 A. M., September 28, 1943, which was continued at the publishers' request until 10:00 A. M., October 12, 1943, and at further request of the publishers has been postponed until 10:00 A. M., October 19, 1943, in Room 3237 of the Office of the Postmaster General, why the authorization of admission of a certain publication, to wit, "Esquire," to the second-class mail privileges heretofore accorded said publication under the provisions of Title 39, United States Code, Section 224 and 226, should not be suspended, annulled or revoked upon the grounds and for the reasons specified in said notice;

56

Now, therefore, having ascertained that the following officials have not personally participated in the investigation or in the initiation of matters involved in this proceeding, pursuant to the authority contained in Title 5, United States Code, Section 22 (Section 8, P. L. and R., 1940), and the provisions of Order No. 17493, dated April 21, 1942, of the Postmaster General, Walter Myers, Fourth Assistant Postmaster General, Tom C. Cargill, Deputy First Assistant Postmaster General, and Frank H. Ellis, Chief Clerk and Director of Personnel, are hereby designated as hearing officers to conduct and preside at said hearing. Walter Myers is designated as chairman in such proceeding.

57

(Signed) **FRANK C. WALKER**  
Postmaster General.



Hearing of Tuesday, October 19, 1943.

58

BEFORE THE  
POST OFFICE DEPARTMENT

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IN THE MATTER  
OF THE  
SECOND-CLASS MAILING PRIVILEGES  
OF

THE MAGAZINE, ESQUIRE, PUBLISHED BY ESQUIRE, INC.

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59

Room 3237 Post Office Department  
Building, Washington, D. C.  
Tuesday, October 19, 1943.

Met, pursuant to notice, at 2 p. m.

Before:

WALTER MYERS, Fourth Assistant Postmaster General,  
Chairman;

TOM C. CARGILL, Deputy First Assistant Postmaster  
General;

60

FRANK H. ELLIS, Chief Clerk and Director of Personnel.

Appearances:

CALVIN W. HASSELL, Esq., Assistant Solicitor, appearing  
on behalf of the Post Office Department.

CRAVATH, de GERSDORFF, SWAINE & WOOD, Attorneys for  
respondent Esquire, Inc.,

by:

BRUCE BROMLEY, Esq.,

JOHN F. HARDING, Esq.,

JOHN F. DOWD, Esq.



*Colloquy.*

**PROCEEDINGS**

**Chairman Myers:** The case set for hearing today is Post Office Department of the United States against the publishers of Esquire on notice of a show cause why the second-class mailing privileges of the magazine Esquire should not be suspended, annulled, or revoked.

61

The papers upon which the proceedings are based will presently be made a part of the record, and if the parties are ready may we have the appearances; first, for the Department and then for the Respondent.

**Mr. Hassell:** Calvin W. Hassell, Assistant Solicitor, for the Department.

**Chairman Myers:** For the Respondent.

**Mr. Bromley:** For the Respondent, may it please the Board, the firm of Cravath, de Gersdorff, Swaine & Wood, Bruce Bromley, of counsel, that is my name; John F. Harding, who sits beside me, also counsel; and John F. Dowd, also of counsel, who sits on Mr. Harding's right.

62

**Chairman Myers:** Now, do the parties desire to make an opening statement at this time?

**Mr. Hassell:** Mr. Chairman, may I say—

**Chairman Myers:** You want to introduce the papers upon which the case is based?

**Mr. Hassell:** Yes.

**Chairman Myers:** Proceed with that, then.

**Mr. Hassell:** I will furnish counsel for the Respondent a list of these papers and he has also had an opportunity to examine them.

63

First, I would like to have introduced for the record the order of the Postmaster General appointing the Board, and I would also like (the record) to make reference to the rules of practice governing this procedure, taken from the order

*Colloquy*

of the Postmaster General, Order No. 17493, published in the Federal Register of April 23, 1942, at pages 3001 to 3003.

64

Next, the record should show the rulings of the Solicitor to the Third Assistant Postmaster General, dated September 8, 1943, to the effect that the January to September, 1943, issues of the magazine are non-mailable under Section 598 of the Postal Laws and Regulations, 18 U. S. Code, 334.

Next, the rule to show cause of September 11, 1943, to the publisher of Esquire, and I understand that counsel admits that service; service of this rule.

Mr. Bromley: That is right.

65

Mr. Hassell: The next item, the letters of September 11, 1943, to the Postmasters of Chicago and New York directing delivery of the rule to show cause.

Next, a letter of September 14, 1943, from the vice-president of Esquire requesting a continuance from September 28, 1943, to October 12, 1943.

Next, a letter dated September 17, 1943, from the Third Assistant Postmaster General to Mr. Gingrich, of Esquire, advising him of the continuance of the hearing to October 12, 1943.

66

Next, a letter of September 29, 1943, from Mr. Harding, of counsel for the publisher, to the Third Assistant Postmaster General requesting a further continuance to October 19, 1943.

Then, a letter dated October 1, 1943, from the Third Assistant Postmaster General to Mr. Harding granting the further continuance to October 19, 1943.

A letter of October 2nd, 1943, to the Third Assistant Postmaster General from the Solicitor holding that the October and November issues of Esquire are non-mailable under Section 598 of the Postal Laws and Regulations.

*Colloquy.*

The next item is an amended rule to show cause, dated October 4, 1943, and letters of October 5, 1943, from the Third Assistant Postmaster General to the Postmasters at Chicago and New York transmitting the amended rule to show cause.

67

Last, a letter of October 8, 1943, from the Third Assistant Postmaster General to Mr. Harding advising him of the further postponement of the hearing to two p. m., October 19, 1943.

Chairman Myers: Is counsel for the Respondent familiar with all of those?

Mr. Bromley: Yes, sir.

Chairman Myers: Any objection?

Mr. Bromley: No objection.

Chairman Myers: They will be made a part of the record.

68

(The above-mentioned papers were thereupon filed and made part of the record.)

Chairman Myers: Now, if the parties desire to make an opening statement I would be glad to hear them at this time.

Mr. Hassell: I should like the answer of the publisher made a part of the record.

Chairman Myers: I thought you included it.

Mr. Hassell: No, sir.

69

Chairman Myers: We should have the answer of the publisher by all means; that raises the issue. Do you have it?

Mr. Bromley: Mr. Hassell has it. It has been filed with him.

Mr. Hassell: I had Mr. Wentzel deliver it to you.

*Colloquy.*

Chairman Myers: I have the original copy. If you want to introduce it into the record, let counsel for the Respondent see it.

Mr. Bromley: May it please the Board, I offer in evidence, and ask that it be made a part of the record, the Respondent's answer to the original and the amended citations.

Chairman Myers: It may be made a part of the record. There is no objection, is there?

Mr. Hassell: Why, I move that a portion of this answer of the Respondent be stricken as it is not pertinent to any issue involved in this proceeding.

The first paragraph, numbered paragraph, on page 1 is a complete answer to the rules to show cause.

Paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 cover matters that are not in issue here. No issue is raised by either of the rules to show cause, and it certainly would be a waste of the time of this Board to go into and develop proof on those items in the answer.

Paragraphs 15 and 16 are argumentative and really have no place in the answer, as also with paragraph 17.

Paragraph 16 attempts to open up in this way, if the Board pleases, the past history of this publication. I warn the Board now that if we are going into that we are going to consume considerable time, if the Respondent is allowed to go into these things directly, because then the Government will then have to certainly go through the files of its office to show the history of the publication prior to the first issue that is involved here, that is, the January, 1943, issue.

Paragraph 17 is argumentative.

Paragraph 18 is argumentative.

Paragraphs 19, 20, 21, 22 and 23 state no issue involved in this proceeding because counsel for the Department will admit the law with respect to the authority of the Post-

*Colloquy.*

master General concerning the granting or revocation of the second-class privileges stated in the Court of Appeals case, *Payne vs. United States, ex rel. National Railway Publishing Company*, 20 App. D. C., 581, and the Supreme Court of the United States in *Haughton vs. Payne*, 194 U. S. 88, and the *Milwaukee Publishing Company vs. Burleson*, 255 U. S. 407. Of course, the statute 18 U. S. Code, 334, should be considered in connection with those paragraphs. I don't think there will be any controversy about the language of the statute.

73

Paragraph 24 is also purely argumentative and ignores the law laid down in the *Milwaukee Publishing Company vs. Burleson*, 255 U. S. 407.

I move the Board that those portions of the answer be stricken.

74

Chairman Myers: The portions enumerated?

Mr. Hassell: Yes, sir.

Mr. Bromley: May it please the Board, since this case may very possibly go to the Supreme Court, at least in one eventuality, it seems to me that the Respondent has the right to protect its legal rights in this case and state clearly its position. There may be some question when we come to particular items of proof under these defenses as to whether what we offer is material, but it seems to me there can be no doubt but what we have a right to plead affirmative defenses; not only affirmative defenses under the statute, but affirmative defenses as the last two do, setting up what we claim to be an invasion of our constitutional rights, in the event this Board construes the statute in a fashion which we consider as unconstitutional.

75

Now, the first defense is an affirmative defense which alleges simply facts which we assert show complete compliance with all the statutory requirements for second-class

*Colloquy.*

privileges, and which Your Honor will remember are four in number.

76 Now, we did that because Mr. Hassell has never been clear with us as to whether he is willing to stipulate that or whether he was not, so we pleaded that as a defense. If he will now stipulate that he raises no issue with respect to that matter and that he agrees that we are entitled to and have fulfilled each and all of the four conditions in the statute which are required to entitle us to second-class privileges, then we will offer no proof under that affirmative defense.

I still think we are entitled to plead it.

77 Mr. Hassell: I have endeavored in conferences with Mr. Harding on several occasions in the past, and by a letter addressed to him, to show what my position was. As a matter of fact, I have shown him in detail the entire Government case. I furnished him with not only the references to the matters and the citations, Exhibit A attached to the citations, that I proposed to call the Board's attention to, but to similar matters in these various issues that I intend to call the Board's attention to.

We make no contention here that this publication does not comply with the first three conditions of Section 226 of 39 U. S. Code.

78 As to the fourth condition, reading that section 224 of 39 U. S. Code, the law requires that second-class matter be mailable matter. That is the first word in the statute 224 of 39 U. S. Code, mailable matter of the second class.

We contend that this publication, as we will show here, has not complied with the fourth condition of the second-class statute in that it is not designed for the dissemination of mailable matter such as described in that section.

Mr. Bromley: Now, if the Board pleases, let me say at



*Colloquy.*

the outset that I have never had a more courteous or fairer or abler opponent than Mr. Hassell. He has shown us every consideration, and nothing that I have said here is intended to be otherwise. 79

It seems to me that we do disagree upon the interpretation of the law and the only way we can protect our client's interest is to plead what I think are proper affirmative defenses.

Now, if Mr. Hassell will stipulate that if Esquire is mailable at all it is mailable with second-class privileges maybe that would obviate our disagreement. I am not sure. In other words, if the only contention that he makes is that it is not mailable because it is obscene, then he ought to be willing to agree that if it is not obscene it is mailable as second-class matter, because, of course, the fourth condition, as the Board probably knows, and I want to quote the exact words, the fourth condition is: "That the magazine be originated and published for the dissemination of information of a public character or devoted to literature, the sciences, arts, or some special industry". 80

Now, we say that is our magazine, that we fulfill that condition. Mr. Hassell says we do not, but only because we are obscene. If we are not obscene, then he, I take it, admits that we are devoted under that statute to the dissemination of information of a public character or devoted to literature, the sciences or arts. 81

Is that a fair statement, Mr. Hassell, or am I still wrong?

Mr. Hassell: I am simply stating the position of the department and I will not alter the position by any statement I make here. It is very clearly shown in the rule to show cause that recites that it is not mailable matter within the meaning of Section 334, 18 U. S. C. 334, in that the various issues have contained matter described and portrayed as



*Colloquy.*

set forth in Exhibit A, which are attached hereto, and are of an obscene, lewd, and lascivious character, and other matter of a similar or related nature, and upon the ground that (b) "that because of the inclusion of a matter in the publication it has not fulfilled the requirements of second-class mailing privileges established by the fourth condition of 20 Stat. 359 (39 U. S. C. Sec. 1103).

And upon the further ground (c) "that it is not a publishable newspaper or other mailable periodical publication of the second class of mailable matter as it, in a general and uniform and systematic manner, published non-mailable matter in that the issues dated January", and so forth, it has included matter such as is cited in paragraph (a) hereof."

I think that the rule of citation states the position of the Department and that is definitely my position and I don't know how to state it more clearly.

Chairman Myers: The motion of Mr. Hassell to strike out will be over-ruled. If any question arises with respect to the evidence on these particular points, they may be agreed upon at the time and perhaps that will eliminate some of the questions which may come up. It is true that there are some references to legal propositions in the answer, but sometimes we have those come up in equity cases in the same way.

We are now ready to proceed.

Mr. Hassell: Of course, I except to the ruling of the Board.

Chairman Myers: Certainly.

Mr. Hassell: Except, I assume I am not precluded from objecting to the testimony introduced with respect thereto?

Chairman Myers: Not at all. That is the point upon which it is over-ruled. You have the right of objection at any time during the proceeding.

*Opening by Mr. Hassell.*

Mr. Hassell: I will call Mr. Wentzel.

Chairman Myers: Do you desire to make an opening statement first?

Mr. Hassell: Yes. The Government will establish first that this publication enjoys the second-class privilege. It will also establish that the several issues involved in this proceeding were actually deposited in the mails.

We will show the quantities of practically all of them, probably not of the last issue, but we will show the amount of postage paid and the amount of postage that would have been charged or paid by the publisher had he not enjoyed the second-class privilege.

Factually, that is all. That will be the Government's case.

Mr. Bromley: May it please the Board, we will concede all of those facts and figures however presented.

The Respondent here is a Delaware corporation which applied for and received second-class privileges back in December, 1933, and until this action has enjoyed them uninterruptedly for ten years.

The citation, as Your Honors are now aware, seems to me sets forth but one ground of attack upon the second-class privileges of this publication, and that is that under a criminal statute it has published obscene, lascivious, lewd, indecent, or filthy matter.

We will show that the magazine during its ten-year history has been published regularly each month. That it now has regular subscribers numbering over 300,000; that each month it regularly sells through newsstands about 400,000 copies; that that newsstand distribution is accomplished through the facilities of the Curtis Publishing Company, the publisher of The Ladies Home Journal and the Saturday Evening Post and others.

*Opening by Mr. Bromley.*

The price of the magazine is fifty cents a copy, five dollars a year.

88 It has had a continuing circulation in England for years. It is a magazine for men as our evidence will establish and its advertising is principally directed to the men's trade.

It regularly appears in from 150 to 200 pages, sometimes more, of which approximately 65 per cent is editorial content and 35 per cent, about, is advertising.

It has now and has always had a standard editorial formula, a living demonstration of which you can see in the table of contents.

89 It always divides its editorial content into about seven classifications. It features a number of articles of current interest, current affairs, now largely matters that deal with the war.

Secondly, it always publishes a number of short stories written by distinguished writers, in many instances stories that have been carried in fine collections of short stories for years.

In the third place, it always carries articles on sports.

In the fourth place, it carries articles on interesting personalities in the news, in this country and elsewhere.

Fifth, it has always a feature on men's clothing, either by way of illustration, text, or both; trends in men's dress.

90 In the sixth place, it has a number of special departments which occur regularly every month, the Sound and the Fury, Letters to the Editor, the Lively Arts, Books, Wearables, Potables, and Edibles, and the Theatre.

Finally, it each month has recurring features, such as great paintings reproduced in color, water colors, photography, both black and white, prints, and the like, and the Varga girls.

*Opening by Mr. Bromley.*

Now, this Respondent is a Delaware corporation and it publishes a number of magazines like the magazine *Coronet*, which is made up of a collection of articles and stories and devoted in part to the arts. 91

It also publishes *Apparel Arts*, which is devoted to the special industry of men's clothing.

It also publishes a series of sports books.

The ownership of this corporation has never changed since the beginning of 1933. It is owned by the Smart brothers and edited by Arnold Gingrich, and those three gentlemen have directed its policy throughout the period of ten years.

The matter which is involved in this proceeding consists of eleven issues which run from January through November, 1943. There are some 1950 pages in those eleven issues, and out of those 1950 pages a total of 36 pages is cited directly by the Department as being obscene. Not all the pages, but generally some part of the page. 92

Now, in addition, here is what we are a little bit confused on, a little bit out of tune with Mr. Hassell. He has served us with what he calls a specification in which he says the citation alleges that there is other matter of a similar and related nature in our book, and then he says, "I now specify what that is", and he calls our attention to 52 additional pages. He does not cite that as obscene. He says that is other similar and related matter. I don't know whether he means it is obscene or not. I am perfectly sure it does not bear such a direct relation to the matter that he complains of that it affects or changes the character of the matter which he directly complains of, although that theory, I think, is somehow not carried out when he says it reinforces the cited matter. 93

So, you have those two classes of matter to consider in these magazines.

*Opening by Mr. Bromley.*

Now, on these 36 pages of directly cited material there are 32 features which he claims either wholly or partly violate the criminal obscenity statute. Of the 32 features, 21 of them are Varga girl drawings. There are 12 of them in the January issue and one each thereafter, and then in one of the magazines there is an advertisement for post-cards, with a small reproduction of the Varga girl drawing on the back, so out of 32 items in his complaint 22 of them are those Varga girl drawings.

The others consist of letters from soldiers or excerpts from military camp papers, a theatrical review by Gilbert Seldes of a Broadway musical, "Star and Garter", now being shown in New York, and one picture of a scene from a Broadway show, "By Jupiter"; exploits of Eskey, a couple of cartoons, one color photograph, and a paste-up feature for service men consisting of a girl sitting on a man's shoulders with the man's face in blank, and it is designed to have the purchaser cut out his face and put it up there and pin it up on the barracks walls.

Now, I want to say this to Your Honors, here is one of the matters that have been cited as obscene. This is a cartoon of some of our soldiers surrounded by a group of girls with spears and underneath it says: "It's no use, Sarge, we are outnumbered. Yippee".

Now, that is cited as violating a criminal obscenity statute.

I say to the Board at the outset that if any such position is sustained by the Board, it goes directly to the constitutional guaranty of the freedom of the press, and as such creates a very dangerous precedent.

The danger, it seems to me, that we will overstep every criminal statute in a ruling of that kind and bar material

*Opening by Mr. Bromley.*

from the mails which are in questioned taste, and that certainly would be a very serious thing with regard to the constitutional guarantee of the freedom of the press.

Now, the 52 pages of related matter is something like the cited matter. Indeed, it is difficult to draw the distinction; how can any man classify one cartoon as obscene and the others as being similar thereto?

Now, I pass to the statutes. The criminal statute, as Your Honors well know, makes it a crime in the following words:

"Every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character \* \* \* is hereby declared to be non-mailable matter and shall not be conveyed in the mails from any post office or by any letter carrier." That is page 6 of our brief, at the bottom of the page. And it further states that whoever shall cause this to be done shall be guilty of a crime and shall be fined \$5,000, or imprisoned not more than five years, or both.

That is the statute and that is a criminal statute, and the very words are "obscene, lewd, lascivious, filthy, indecent," those five words.

Now, you would think that Mr. Hassell and I could agree upon the test. Perhaps the Chairman knows better than the other members that lawyers seldom agree, but we are in disagreement as to the test which you are obligated to apply under the law.

What is the test as to whether a thing is obscene or not? What is the law? What has the law had to say about it?

And let me say before I come to that, that there is no direct connection between this criminal statute and the other statute which lays down the four conditions in order to entitle the publication to go second-class. There is no



*Opening by Mr. Bromley.*

100 direct connection. If matter is obscene under the criminal statute which says "It is hereby declared to be non-mailable" it should be barred not only from the second-class, but from the mails entirely, and the publisher prosecuted in the criminal courts.

But that is not the effort in this proceeding. Here the effort is to deprive us of second-class privileges so that it can go in a higher class, in our case fourth class, which would cost us something over half a million dollars more a year if sent in that class.

191 In other words, instead of being fined \$5,000 under the criminal statute, it is the purpose of the Government to fine us \$500,000 a year and let us go on and send the stuff through the mails.

I say there is no authority for the Government so to interpret the criminal statute.

What is the test? We tried to phrase it at page 9 as we think has been clearly established in the law as follows:

"The gravamen of obscenity is the tendency of the publication to corrupt the morals of the normal average person or to lower such person's standards of right and wrong concerning sexual behavior. The test is that of sexual impurity."

102 We have quoted all the cases which we think bear on it and there have been many. At the bottom of the page the Court in the case of the United States versus Dennett, which was a very famous one, said:

"The statute we have to construe was never thought to bar from the mails everything which might stimulate sex impulses."

In the Swearingen case the Supreme Court says:

"The words 'obscene', 'lewd', and 'lascivious', as used in the statute, signify that form of immorality which has relation to sexual impurity, and have the same meaning



*Opening by Mr. Bromley.*

as is given them at common law in prosecutions for obscene libel. As the statute is highly penal, it should not be held to embrace language unless it is clearly within its letter and spirit." 103

And throughout the rest of those quotations the standard is set up, as I believe we have phrased it. Where is the disagreement?

In his Appendix A brief which Mr. Hassell has submitted to the Board as being a test of the law, he has gone to the original test set up by the English courts in 1888 in *Regina vs. Hicklin*, which in 1889 in *U. S. vs. Clarke* was approved. That is the weakest class test, and that test has been expressed this way: 104

"There is another large class to be found in every community—the young and immature, the ignorant, and those who are sensually inclined—who are liable to be influenced to their harm by reading indecent and obscene publications. The statute under which this indictment is framed was designed to protect the latter class from harm."

Now, lawyers have come to refer to that as the weakest class test. But that has been repudiated. That is no longer the law of this country. It has been expressly and vigorously repudiated by Judge Learned Hand in the famous "Ulysses" case and in the *Parmelee* case in the Court of Appeals for the District of Columbia, and I believe does not exist any longer as the correct test, because the Judge here in the District said: 105

"Although the word has been variously defined, the test applied in many of the earlier cases was that laid down by Lord Chief Justice Cockburn in *Regina vs. Hicklin*, as follows: \* \* \* whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands

*Opening by Mr. Bromley.*

106 a publication of this sort may fall.' \* \* \* But more recently this standard has been repudiated, and for it has been substituted the test that a book must be considered as a whole, in its effect, not upon any particular class, but upon all those whom it is likely to reach."

So, it is our position, as a matter of law, that the test is the test upon the normal average mind, and whether or not it has the tendency or will corrupt the morals of such a person, lower his standards of right and wrong with relation to sexual behavior, or corrupt his morals.

107 The test is not whether or not it would stimulate sex thoughts because it would be impossible to bar all things that stimulated thoughts of sex.

Now, in this connection, in Appendix A, the Solicitor for the Department seems to take the position that something less than obscenity as defined in the criminal statute will suffice to deprive a publication of second-class privileges. And that is why we pleaded one of these constitutional defenses. I do not believe it is possible to say, even though the second-class privilege may be properly described as a privilege, that Congress ever set up any other standard than obscenity, and that you can find any warrant in any statute for saying "Even though the thing is not obscene it comes so close to the line that while it should not be barred from the mails altogether, it should lose this subsidized position given it by the second-class privilege", and I think the position of the Department is founded upon the erroneous assumption that something less than obscenity will justify this department in depriving us of our privileges. I do not believe that is the standard.

108

We shall show that the test of obscenity has always been recognized by the law as a living, growing, changing standard.

*Opening by Mr. Bromley.*

Judge Hand wrote about that and said that the words of the statute and the Constitution mean different things for different periods and not only what people thought about in Victorian times.

109

I need only remind you that that is best exemplified by the development in the bathing suit. What would our Victorian forefathers have thought, those who clothed women in the bathing suits with flowing skirts and stockings, about the girls on the beaches at Coney Island or Newport?

We have to put our minds in tune with what the public generally thinks today, and that is why we refer to other magazines and publications. We don't mean why can't we do it because someone else does it. But it is important, it seems to me, to find out what is commonly accepted, what is not criticized, what appears generally throughout the reputable magazines of today, such as Harpers, Time, Life, The Saturday Evening Post, and so forth.

110

And, in that connection, it is our position that we are entitled to show, as we have alleged in one of these defenses, that this Department itself 19 consecutive times wrote us formal letters approving issues of this magazine, from 1940 through 1942, which contain Varga girls more extreme, in many respects, than those appearing today.

I realize no man can estop the Government, but this is an indication of what the people in this Department thought about those drawings at that time.

111

Now, I wonder about the material itself. Our evidence will show that judged by present day standards the material complained of, without any exception, is sanctioned.

We expect, with the permission of the Board, to produce psychiatrists, clergymen, and educators, to whom we have submitted this material and let them give you their expert

*Opening by Mr. Bromley.*

112 opinion as to what the effect of the matter complained of is upon the various classes of persons in each community, and what the tendency is to lower the standards of right and wrong, and their opinions about obscenity.

What are the Varga girl drawings? I wish Your Honors would now open the January issue to page 97, where there are 12 all in a bunch. They are a recurring feature; they have been published for ten years. They are one of the few features which originated in the magazine—they or their predecessor, the Petty girl—and have been published ever since. You have a ten-year history behind this thing.

They are frankly published for the entertainment they afford, and we do not contend that we publish them as art.

113 As the publication goes on—not in that book, but in others—you will notice the size has increased and we have a gate fold. That is because of the servicemen's demand for pin-up pictures in a somewhat larger size.

We shall present witnesses to show that those pictures are nothing but attempts to glorify the American girl by artistically presenting the creator's conception of the most perfect and attractive American form and figure he can think of.

114 There is in no one of those drawings ever any exposure of any intimate part. They are not drawn from models but are created as wax dummies are. They represent a combination of attractive features. If you analyze them they are all out of proportion. The legs are too long, the figure is shortened or lengthened. They are imaginative reproductions of the artist's conception of what the perfect figure, face or form, of a woman should be.

I say that judged by present-day standards of evening gowns or bathing suits, those pictures are not obscene. Judged by evidence which we will seek to introduce here

*Opening by Mr. Bromley.*

as to girl illustrations generally by many reputable magazines, and by magazine advertising such as lingerie, bathing suits, perfumes, even cigarettes, that these pictures are sanctioned by that custom which has been built up until today they are ~~not~~ ahead of the times. Indeed, I sometimes think they are not up to the times.

And, in addition to that I hope you will take the opinion of skilled psychiatrists and educators as to their opinion of these drawings.

In addition, there are some photographs by photographers of national reputation, for artistic presentation. They are in relaxed poses, but fully covered as far as any exposure is concerned. There are also reviews of the Star and Garter show, which perhaps you saw, as I did, a sort of bawdy show. It has been presented in New York and is still running.

All the reporter, Gilbert Seldes, did was to say how far it went and what was the one dirty song which the chorus sang. That is only factual reporting to which any publication is entitled.

Life will report what it was that caused a burlesque show to be banned, in a way which if it does not express its approval, does not lead people to go to see it or want to see it, but it contents itself with reporting the facts.

Then, there is a series of articles, one of which was written by Paul Gallico exposing the cheap and tawdry lack of appeal that existed in burlesque and what a silly thing the "strip" was, and the thesis of his article was that if producers of this sort of thing think it attracts men generally, they are crazy. It is not sex stimulation at all.

Gilligan wrote a report of a typical night court in New York. It is a fine thing for all adolescent people to read because it points out the dangers of the prostitute and the

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116

117



*Opening by Mr. Bromley.*

118 high prevalence of venereal disease in New York, and should cause any young man to hesitate before he committed any indiscretion. It is helpful and useful.

And then George Jean Nathan condemning 45 or 50 things currently being produced on the stage, said

"I resent producers who present shows in which there is a confusion among those on the stage as to whether or not a reputable girls' school or some other such institution is or is not a bawdy house."

That phrase occurs in literature and has occurred for years and years.

119 Gilbert Seldes criticized the modern tendency of clothing and perfume ads to appeal to the senses and poked fun at the titles which were given by manufacturers to their perfumes such as "Desire" and so forth, and said: "How silly to try to sell by emphasizing that element."

And there are a couple of pages devoted to excerpts from camp papers published by soldiers. Some of the humor may be in bad taste, a little mannish, a little crude, but nothing obscene or vulgar about it.

A girl says, "Would you like to see where I was operated on?" And the man says, "No, I hate hospitals."

120 Those are merely reproductions of things published in Army journals. They are designed to show a cross section of Army humor and what the boys are reading. And, anyway, most of the jokes are pretty old stuff for the most part.

And then there are some articles which contain indelicate language. An article about a merchant marine sailor who has been torpedoed several times and he gets drunk on shore and swears and uses indelicate language, and an arti-

*Opening by Mr. Bromley.*

cle about Negroes living together in one room in tenements.

Then, cartoons dealing with, some of them, indelicate situations. It is our opinion that indelicate matters and even matters of vulgarity are not matters of obscenity. 121

And for that reason I have asked these psychiatrists to come here to see if they cannot draw the line.

And then there are some cartoons. Two air raid wardens on a roof looking through the transom. The light has come on and you can't see what is underneath the transom, and one fellow says, "To think I gave up drawing." What is he looking at? He must be looking at an artist who is drawing a model. You can think of worse things and you can think of better things. The model might be dressed and going home. Is it obscene because some dirty mind might think of a bad thing? The normal reaction to a thing like that is not bad. 122

Finally, the character of this magazine must be tested not only by consideration of these features complained of, but by its contributors, advertisers, and its readers. And we would like to show you, if we may who our contributors are. Starting with William Lyon Phelps, who has contributed to Esquire, and who wrote us: "I enjoy my writing for Esquire so much that I would let nothing interfere with it," and Peter B. Kyne, Theodore Dreiser, and many, many others. It is inconceivable that these men would let their names be associated with a dirty, filthy magazine. 123

Now, no advertisements are complained of except two out of the bunch, the post-card one I mentioned and an advertisement of the Literary Guild of America, an adjunct of the publishing house of Doubleday-Doran.

They advertised some books by Thorne Smith in the way that publishers for 50 years have advertised de Maupaus.



*Opening by Mr. Bromley.*

sant. illustrated with women with not very many clothes on, and saying, "Read the startlingly frank books".

124

Those are the only two specified as obscene or related to obscenity.

Our advertisers include Ford, Chrysler, United States Rubber, Cluett Peabody, Wilson Sporting Goods, Bristol Myers. There are no love potions or females seeking companionship. There is nothing of that sort whatsoever.

This magazine is distributed through the vast distributing organization of the Curtis Publishing Company. We believe our magazine is read by at least 34 per cent of the armed forces. The Army buys it for resale in most all of its centers.

125

We are furnishing 50,000 and later 60,000 copies a month made up on thin paper, without advertising, to be shipped by the Army to our soldiers overseas.

We would like an opportunity not to show our entire subscription list, but to show who takes this magazine regularly, and that would disclose that there are nearly 50 individual chaplains in the service who are subscribers, over 4,000 U. S. O. centers and 1,600 schools and universities, 9,000 commissioned officers, and many directors of business firms listed in Poor's and Moody's.

It is to be found in substantially all of the university libraries and most, if not all, Navy and Army hospitals.

126

Not one of these eleven issues has been cited or disapproved of by any censorship body in this country. This magazine is not on the proscribed list of the National Order of Decent Literature and the New England Watch and Ward Society does not condemn this.

If the Board will bear with us, and we will try to be as brief as we can, we would like an opportunity to present these witnesses.

*Opening by Mr. Hassell.*

Chairman Myers: Do you have a copy of your answer to spare?

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Mr. Bromley: Yes, we do (document handed to Chairman).

Mr. Hassell: Mr. Chairman, in view of the argumentative statement of counsel in which he has gone into these various matters in advance, I think it incumbent upon me to make a further statement to clarify my position here.

I explained to counsel when I furnished the items of similar matters to those charged in the citation specifically, that it was not my contention or position that these were all of the objectionable matters in this publication. I said I simply intended to call the Board's attention to those matters, that the magazines would be offered as a whole, and would, I assume, be considered as a whole, in their entirety.

128

As to counsel's emphasis that the statute, the postal obscenity statute, so-called, is a criminal statute, I would respectfully call his attention to the fact that it also makes matter non-mailable and imposes upon the Postmaster General the authority, the duty and the obligation to exclude matter contained thereunder from the mails.

Also, in addition to the obscenity and indecent matter in the case of *United States vs. Limehouse*, 284 U. S. 424, when the statute was amended in 1909 by the addition of the words "and every filthy", the Supreme Court said, "This amendment added a new class of unmailable matter," and you will find that class of unmailable matter in this publication if you go through it.

129

The words which were the basis of the indictment in the *Swearingen* case, 161 U. S. 446, which the Court held were not of the character as to make those matters punishable by the statute as it was then worded, when it was amended

*Opening by Mr. Hassell.*

130 —it was amended by reason of the decision in the Swear-  
ingen case—a new class of unmailable matter was created  
by the addition of the words “and every filthy”.

I want to add that I make no claim that this magazine  
does not contain perfectly proper and interesting matter in  
addition to these matters that we are complaining of here,  
but counsel knows, and each member of this Board knows,  
that you can be surfeited by filth. The promoters of every  
burlesque show know that. When he brings on his strippers  
he intersperses those things with so-called comedy, scenic  
matter, and other things.

131 This was recently called attention to by an article ap-  
pearing in Harpers Magazine discussing these picture  
magazines, and the writers of this article have stated:

“Sex required skill in handling. People wanted to read  
about it and look at it frequently, but not all the time;  
it could be given in large doses, but it must not be over-  
done. How to space and coax the reader along from one  
dose to the next was Goddard's anxious care.”

As I stated before, we are going into the past history  
of the publication and we are going to show the fight this  
publication has had ever since its inception to keep this  
rank filth in the mails.

132 Counsel has referred to this office having passed certain  
issues. I want to show the files and records on those  
matters, if that is brought in in his direct case, to show  
where we repeatedly, time after time, told them we would  
bar matter from the mails, how we were deluged by edi-  
torials and cartoons and practically put on the editorial  
staff of this publication, in the hope that they would get  
something by.

And, of course, the Solicitor was perfectly human; that  
thing worked, probably, once in a while. Probably they

*Nelson B. Wentzel—for Post Office—Direct.*

did get something by that they should have not gotten by, but the fact that the Solicitor or the Solicitor's Office or anyone made a mistake two years ago does not justify this publisher in putting this stuff in the mails now at a subsidized rate of postage.

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Chairman Myers: If there is nothing further, we will proceed with the evidence.

NELSON B. WENTZEL was called as a witness by and on behalf of the Post Office Department, and being first duly sworn, testified as follows:

*Direct Examination by Mr. Hassell:*

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Q. State your name and official position, Mr. Wentzel.  
A. Nelson B. Wentzel, Superintendent, Division of Classification.

Q. For how long have you held that position, Mr. Wentzel? A. Since March, 1934.

Q. And prior to that time were you connected with that office? A. Yes, since 1906.

Q. You were Assistant Superintendent for some years prior to 1934, were you not? A. I was.

Q. Mr. Wentzel, has the publication known as Esquire, the Esquire magazine, a second-class permit? A. It does have.

135

Q. I believe I have the files here (handing the witness). Will you state when this publication was accorded the second-class privilege and what its frequency was at that time? A. The original entry of second-class matter was authorized October 19, 1933, based on the Autumn 1933 issue as a quarterly publication.

*Nelson B. Wentzel—for Post Office—Direct.*

Q. And when did it change its frequency? A. Re-entry was authorized as a monthly under date of December 15, 1933.

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Q. Was it entered at Chicago and New York? A. The original entry was at Chicago in both of these cases. Additional entry was accorded considerably later at New York for certain mailings.

Q. I see. Coming to the January to November, 1943, issues of Esquire, Mr. Wentzel, have you evidence of the actual mailings of that publication and the amounts of the mailings?

Mr. Bromley: We will concede that, if the Board please.

137

Mr. Hassell: I would rather have it in the record, Mr. Bromley.

The Witness: We have the duplicate copies of the receipts which were issued by the post offices of mailing during this interval.

Mr. Hassell: At this point I would like to offer these issues from January to November, 1943, in evidence and have them marked as Post Office Department's Exhibits.

Mr. Bromley: No objection.

Chairman Myers: Without objection, they are admitted in evidence.

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(Department Exhibits 1 to 11, referred to above, were received in evidence.)

*By Mr. Hassell:*

Q. Mr. Wentzel, are these the receipts showing the mailings of these issues, which I show you? A. Yes, sir.



*Nelson B. Wentzel—for Post Office—Direct.*

Q. These show mailings at Chicago and New York post offices? A. That is right.

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Mr. Hassell: I would like to offer these in evidence.

Mr. Bromley: No objection.

Chairman Myers: Let them be marked and received in evidence.

(Department Exhibits Nos. 12-A to 12-Y, 13-A to 13-N, 14-A to 14-M, 15-A to 15-O, 16-A to 16-J, 17-A to 17-K, 18-A to 18-I, 19-A to 19-C, 20-A to 20-L, 21-A to 21-M, 22-A to 22-K, 23, 24-A to 24-K, were received in evidence.)

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*By Mr. Hassell:*

Q. These cover the issues from January to November—only one receipt covering November? A. That is right.

Mr. Hassell: I might explain to the Board that apparently there are various and consecutive mailings of each issue. The November issue, of course, has not been out very long.

*By Mr. Hassell:*

141

Q. You might explain for the record how those receipts are obtained. A. The mailings are presented at the respective post offices, they are weighed by the post office employees, and based on figures taken at the time of the weighing, the receipts are issued and the postages computed on an analysis of the distribution by zones which the publishers furnish twice a year or oftener if they so desire, or if the Post Office feels it is necessary.

*Nelson B. Wentzel—for Post Office—Direct.*

142 Q. And these receipts show the amount of postage actually paid for each of those mailings? A. They do.

Q. Have you made a calculation of the amount of postage paid on most of these issues? A. Yes, we did. We summarized the weights and postage from these receipts and I have it here by months.

Q. What months does that cover? A. January, February, March, April, May, June, July, August, September and October.

143 Q. I see. And do you have the estimated postage that the fourth-class rate of publication would have taken had it been mailed fourth class? A. For the months of January, February, March, April, May, June and July we did make such an estimate. During that period the total weight of the copies mailed was 2,900,380 pounds. The postage paid at second-class was \$66,341.52, and the estimated postage at the regular rates which would have been the parcel post rates, and these copies, weighing between one and two pounds, would have been a charge for a two-pound parcel, from the information given on the publisher's analysis of distribution, would have been \$369,045.43.

Q. For the seven months? A. For the seven months. We did not make that extension for the remaining period.

144 If the remaining months were added the figures would be approximately one-third larger.

Mr. Hassell: That is all.

Mr. Bromley: No questions.

Chairman Myers: That is all.

(Witness excused.)

Mr. Hassell: At this point, Mr. Chairman, I would like to have the pleasure of the Board as to



*Colloquy.*

whether the Board would like for me to go through these issues and point out the various things I have told counsel I was going to point out to the Board. He has done that in his own way to some extent in his opening statement. Or would you wish that I reserve this for argument? The issues will be in evidence.

145

Chairman Myers: I prefer to have it in argument. I think it would be fresher for us.

Mr. Hassell: I might, at this point, if counsel does not object, give the members of the Board the lists for each month that I furnished counsel.

146

Mr. Harding: Why don't you give them the complete list which includes November? Is that the same?

Mr. Hassell: Yes.

Mr. Harding: All right.

Mr. Hassell: I might state that the items checked in red pencil are the ones specifically mentioned in the citation.

Chairman Myers: Mr. Bromley said he would agree to all that you might want to prove. Could you indicate that on the record?

Mr. Hassell: We might have an understanding that if the Department wants those papers they can substitute papers or a summary of them.

147

Mr. Bromley: Surely.

Mr. Hassell: There is one difficulty with my statement of a while ago with respect to going into details on argument. I believe under the rules we are ordinarily limited to an hour on argument. I might require a little more time if I put this off until then.

*Kenneth J. Tillotson—*for Respondent—*Direct.*

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Chairman Myers: I think we might be willing to waive that. We want to give everyone a chance to be heard.

\* Mr. Hassell: That is the Government's case, Mr. Chairman.

Chairman Myers: We will have a recess for ten minutes.

(Whereupon, a brief recess was taken.)

Chairman Myers: We are ready to proceed.

149

KENNETH J. TILLOTSON was called as a witness by and on behalf of the Respondent, and, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Bromley:*

Q. What is your name, sir? A. Kenneth J. Tillotson.

Q. Where do you live? A. 179 Clifton Street, Belmont, Massachusetts.

Q. What is your profession? A. Physician and psychiatrist.

150

Q. Do you hold any degree? A. Master of Science and Doctor of Medicine from the University of Vermont.

Q. Do you practice your profession? A. I do.

Q. Where? A. At the McLean Hospital, Belmont, Massachusetts; Massachusetts General Hospital in Boston, and I am consultant at several hospitals, and to the Hygiene Department of Harvard University, and former instructor in psychiatry at Harvard Medical School, and I have a private practice and office at 179 Clifton Street, Belmont.

*Kenneth J. Tillotson—for Respondent—Direct.*

Q. Belmont is part of Boston? A. Belmont is a suburb of Boston.

Q. How long have you been engaged in your profession of medical doctor and psychiatrist? A. I graduated from the medical school in 1921 and went to Mary Fletcher Hospital in Vermont, and I came to Harvard and began specializing in neuro-psychiatry, and since 1922 I have practiced my specialty of neuro-psychiatry.

151

Q. Have you any church affiliations, doctor? A. I have.

Q. What are they? A. I am an Anglo-Catholic, better known as high Episcopal.

Q. Tell us briefly the nature of your professional work. A. At first, after specializing, I held various positions with the McLean Hospital exclusively, such as assistant physician, clinical doctor, and then medical superintendent, until 1932, when I was made psychiatrist-in-chief devoting my entire time to research in nervous and mental diseases, teaching and the clinical practice on nervous diseases.

152

Q. Have you ever had any occasion, and, if so, to what extent, in advising any Governmental officials on the question of obscenity or related matters? A. I have. The two district attorneys in Massachusetts in Middlesex and Norfolk Counties on several occasions, and the Attorney General on several occasions, in regard to cases involving the issue of obscenity, and several private cases in this region, all the authorities at Harvard University in regard to obscenity, and the issues that arise in the large student body there.

153

Q. Have you had any experience in connection with Selective Service and Army induction? A. I am chief advisory psychiatrist for District 11 in Greater Boston, and I am regularly consulted and do regular duty at the First Corps Area Induction Center one day a week.

*Kenneth J. Tillotson—for Respondent—Direct.*

154 Q. Has any of your experience been in connection with young men of high school or college age? A. A part of my patients are young men of high school and college ages, and for five years at Harvard in the student health department I spent two days a week dealing exclusively with the college students there.

Q. To what extent have you made case studies of what constitutes sexual impurity or obscenity? A. In every psychiatric study the question of the sex life and all that pertains thereto is a part of the study, and in the course of a year I study and review several thousand cases.

155 Q. Will you give us a brief definition of the word "psychiatry"? A. Yes. Psychiatry is that department of medical science which deals with diseases of the mind. Neuropsychiatry embraces a little more and spreads the diseases of the mind to the nervous system, including diseases of the personality.

Q. Doctor, at my request have you made an examination of these eleven issues of Esquire magazine in evidence as Post Office Departments Exhibits 1 to 11, inclusive? A. I have.

Mr. Hassell: At this time I would like to object to this testimony.

156 As I take it, this witness is to advise this Board as an expert witness as to what is obscenity under the statute involved here. This proposition is entirely novel in cases of this sort, not only in hearings of this sort, but in criminal prosecutions, so far as I am advised.

° Counsel in his remarks, in his opening statement, referred to the effect the matter would have upon the average mind. I take it that he would include

*Kenneth J. Tillotson—*for Respondent—*Direct...*

in that classification the members of this Board.

Therefore, I submit that what this witness may say, regardless of his qualifications as a psychiatrist or his qualifications or experience in dealing with warped mentalities, his testimony will be of no value to this Board and certainly would not be controlling, and it would not have any value so far as I can see in enabling this Board to determine the issue here involved.

157

Chairman Myers: As I understood from the opening statement, this is an effort to prove standard. Isn't that your purpose?

Mr. Bromley: Standard and effect upon people generally of the attacked material.

158

Chairman Myers: And for that purpose he was qualified as an expert. Was your objection directed to the last question?

Mr. Hassell: My objection is directed to that matter as well as the matter to which I referred. Counsel, in his statement, said that he also proposed to produce or give in evidence here the names of persons who purchased this magazine. That specific matter has been passed upon by one of the Federal Courts—

Chairman Myers: That question is not before us yet. It may be later.

159

Mr. Hassell: That is certainly related to this proposition. The inference there is that if responsible people buy this magazine, then it is not obscene, but I submit the testimony of this witness will be of no value to this Board.

Mr. Bromley: In 1940 the Court of Appeals of this District had occasion to consider this question,

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and I would like to call Your Honors' attention to this expression from this Court.

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"With such considerations in mind, perhaps the most useful definition of obscene is that suggested in the case of *United States vs. Kennerley*, i. e., that it indicates 'the present critical point in the compromise between candor and shame at which the community may have arrived here and now.' But when we attempt to locate that critical point in the situation of the present case, we find nothing in the record to guide us except the book itself. The question is a difficult one, and to which the expert opinions of psychologists and sociologists would seem to be helpful if not necessary. Assumptions to the contrary which appear in some of the earlier cases, reveal the profound ignorance of psychology and sociology which prevailed generally, when those opinions were written. More recently, in the cases and text books, the desirability and pertinence of such evidence has been suggested. Lacking such assistance in the present case, we can compensate for it in some measure by noticing, judicially, evidence which is thus available to us."

162

I submit, therefore, that the testimony is competent.

Chairman Myers: The objection is overruled.

*By Mr. Bromley:*

Q. Have you made a careful examination of all of the eleven issues? A. I have.

Q. Will you turn to page 97 of the January issue and direct your attention with me to the twelve Varga girl



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drawings appearing on that page and subsequent pages?

A. Yes, sir.

Q. Have you likewise examined every Varga drawing in every one of the remaining ten issues? A. I have.

163

Q. Directing your attention to all of the Varga girl drawings, in all of the issues, let me ask you this question: Based upon your training and your experience and the case studies which you have made, are you able to express an opinion as to the effect that these drawings would have upon people of various age groups in this country? A. I am.

Q. Will you state what effect, in your opinion, this material would have, if any, upon pre-adolescents? A. I believe it would have little, if any, effect on pre-adolescents.

164

Mr. Hassell: I don't like to interrupt again, but does counsel have other witnesses of this sort present in the hearing room?

Mr. Bromley: Yes.

Mr. Hassell: I request the other witnesses on this particular feature, at this time, be excused.

Mr. Bromley: That is agreeable.

Mr. Harding: There are none here today.

Mr. Bromley: There are other witnesses in the case present, but not psychiatrists.

Chairman Myers: Does your objection extend to them, Mr. Hassell?

165

Mr. Hassell: Other witnesses who are to appear as expert witnesses on the question of what is obscene?

Mr. Bromley: Yes.

Mr. Hassell: I submit that they should be excused.

Chairman Myers: They may retire from the room.

*Kenneth J. Tillotson—for Respondent—Direct.*

*By Mr. Bromley:*

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Q. What is a pre-adolescent, Doctor? A. Usually a child from the age of twelve to fifteen.

Q. And what is an adolescent? A. An adolescent is usually an individual from twelve to fifteen or over.

Q. Up to what age? A. Well, I have students in the graduate school at Harvard at 25 whom I thought were adolescent. It is a variable thing depending upon the individual personality.

As a rule, adolescence is achieved by the age of 16 in the most retarded normality.

167

Q. What is a post-adolescent? A. An adult. After they have gone through the period of transition from childhood to adulthood.

Q. What, in your opinion, would be the effect of this material upon those three classes? A. The adolescents are interested in body development and I think that these would be very inspiring to the young adolescent girl, and I think they would be attractive to the young adolescent boy, not in an obscene way, however.

To the adult I think that they glorify the American girl in physical and esthetic development and body grace.

168

Q. In your opinion, is there anything in any of those drawings in any of the issues that would tend to stimulate sexually impure thoughts in any average member of the groups which you have described? A. No, and my basis for saying "No" is that with hundreds of adolescents and camp men, even those who have had troubles and problems of adolescence, the masturbation problem and so forth, never have I known any of this material to come into the case studies, whereas other magazine material has come into the studies.

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Q. In giving these answers do you make any distinction between males and females? A. No, except that I have had more experience, a great many more studies, of males than females.

169

Q. And what distinction, if any, do you make between normal and abnormal members of these groups? A. I have studied the normals extensively and it was with the normals in mind that I spoke particularly in answer to your questions.

There are, of course, abnormal sexual psychopaths who get stimulation and see obscenity in a variety of things, but that is with their own perverted and distorted minds rather than the material they are necessarily looking at.

170

Q. Do you see anything in the Varga drawings that would have a greater tendency to stimulate abnormal people than to stimulate normal people? A. No.

Q. In your opinion, is there anything in any of these drawing that would have a tendency to corrupt the morals of any average member of the groups you have mentioned?

A. In my opinion, there is not.

Q. Will you please state your reasons for that opinion?

A. Yes. The parts of the body that ordinarily stimulate or are considered obscene, are very carefully covered up in all of these Varga drawings. I can specify those parts if it is thought advisable.

171

Q. I wish you would. A. Well, the nipples on the breasts are concealed in all of them. The pubic regions are carefully concealed and there is no exposure which is necessary to constitute obscenity, indecency, or filthiness.

(There was a discussion off the record.)

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*By Mr. Bromley:*

172

Q. Now, in your opinion, is there anything in any of the Varga drawings in these eleven issues which would have a tendency with the average normal human being to lower his standards of right and wrong as regards the sexual relation? A. In my opinion, there is not.

Q. Is there anything that is lewd, lascivious or indecent or filthy, in your opinion, in regard to these drawings? A. No.

173

Q. Would your answer be the same if I took them singly in the January issue or as a group in the eleven issues? A. It would. I have been over them all very carefully.

Q. Will you state your reasons for your opinion that there is nothing lewd, lascivious, filthy or indecent about the Varga drawings? A. Yes, because they appear to be an effort to glorify the physical beauty of young womanhood as we see it in this country in accordance with the tendency of the times.

There is nothing exposed about these pictures that could constitute lewdness or lasciviousness. The poses are graceful gestures such as you see. The hair on the head is featured in practically all of them, and the hair is one of the female's chief assets in estheticism and attractiveness.

174

Q. Will you turn to the next picture in the January issue—the calendar for August in the January issue? As I understand, the Department there specified as obscene not only the picture but the verse that accompanies it. Have you read the verse? A. I have read the verse, yes.

Q. Does that in any way change any of your answers that you have given? A. It does not.

Q. Do you consider that the verse or anything contained in it is in any way obscene, lascivious, lewd, filthy or indecent? A. I do not.

*Kenneth J. Tillotson—for Respondent—Direct.*

Q. Likewise, the September verse has been cited as obscene. Would your answers be the same in regard to the September picture and verse? A. They would. This is like a bathing costume, and the weather is getting cold.

175

Q. So that the reference, "Oh, Mr. Varga, Hurry up and let me put some clothes on," you think is appropriate to the season? A. I do.

Q. While I am on the subject, let me call your attention to page 38 of the April issue in which another Varga girl appears, this time in the pin-up size, and in this connection the verse is also cited as being obscene. Have you read that verse? A. I have.

Q. Would that change any of your answers which you have given with respect to this picture? A. It would not.

176

Q. Is there anything in that verse which you consider to be obscene, lascivious, lewd, filthy, or indecent? A. Nothing whatsoever.

Q. And, finally, in the November issue of the magazine, at page 46, the verse is likewise specified as well as the picture. Have you read that? A. I have. I see nothing objectionable in the verse or suggestive.

Q. Does the fact that the picture is accompanied by the verse change any of the answers you have given heretofore? A. It does not.

Q. Do you find anything obscene, lascivious, lewd, filthy, or indecent about the verse? A. I do not. In fact, the verse explains the pose.

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Q. Will you elaborate on that?

Mr. Hassell: Did you say page 36 or 46?

Mr. Harding: 46.

The Witness: The girl is properly attired and she expresses fright or surprise, and the last line

*Kenneth J. Tillotson—for Respondent—Direct.*

says, "It wasn't a wolf but a mouse." Most women are afraid of mice.

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Chairman Myers: I have often wondered what the psychology of that was.

*By Mr. Bromley:*

Q. Now, going back to the January issue, the only other material in that issue which is cited as obscene begins at page 83 and is an article entitled, "Star and Garter Blues" by Gilbert Seldes. Have you read that article? A. I have.

179

Q. Can you tell us briefly what it is about? A. Gilbert Seldes has given a very good description of the Star and Garter Blues and it seems to be an accurate narration of the musical comedy now playing on Broadway, and I see nothing objectionable in this article.

Q. It continues on page 119. A. It is a very accurate description of what is portrayed in the musical comedy Star and Garter.

Q. Did you see the show yourself? A. I did.

Q. Is it still running in New York, do you know? A. I don't know; I saw it last year.

180

Q. Now, I direct your particular attention to page 119, columns 2 and 3 and 4, beginning in the second column of the first full paragraph: "Once in a while". Have you read that reference to the song, "Bunny, Bunny, Bunny", particularly? A. Yes.

Q. Did you hear that song sung in the show? A. I did.

Mr. Hassell: What month is that?

Mr. Harding: January. It is a continuation of the Star and Garter piece.



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*By Mr. Bromley:*

Q. Do you consider that to be a piece of accurate reporting as to the singing of that song? A. Precisely.

Q. Do you find anything in the description of that song which, in your opinion, would tend to stimulate any sexually impure thoughts in a normal individual? A. I do not.

Q. Or lower his standards of right or wrong? A. No, I do not.

Q. Or corrupt his morals? A. No.

Q. Will you state your reasons for that opinion? A. Because there is nothing about this that refers to anything vulgar. It refers to a song which was sung and refers to the bunnies which the chorus carried when they sang the song. I see nothing in it to indicate lewdness or obscenity.

Q. Now, there are in that issue one or two other references not claimed to be obscene, but claimed to be related, and the first one appears on page six? A. Yes.

Q. That is the picture insert entitled "Shor Nuff"? A. Yes.

Q. And that is on its face and by reason of the footnote, an exact reproduction from an Army camp paper? A. Yes.

Q. Have you read that article? A. Yes.

Q. Do you see the reference in the first paragraph to Esquire and its spicy cartoons? A. Yes.

Q. Do you find anything that is obscene, lewd, lascivious, filthy or indecent in that reference? A. I do not.

Q. Do you find anything of that nature in any part of the article? A. I do not. I think it is written to be humorous and in keeping with the times and must be entertaining to the service men it is intended for.

Q. In connection with number seven where it says "Juk-

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184 ing—that's right. Just what you're thinking about," is the reference, so far as the word "joking" is concerned, explained in the article itself? A. Yes.

Q. Whereabouts? A. I think it is the last paragraph of the first column.

Q. What does the article say "joking" means as used there? A. "Joking? This is something Woodhead thought up which includes sex, dancing, manners, drinking and risqué behavior in one package".

Q. Do you find anything obscene, filthy or indecent in that reference? A. I do not. The young people today are talking about joking and doing that sort of thing.

185 Q. Do you find anything which is lewd or lascivious in any part of that reproduction from the Army paper? A. I do not.

Q. Will you turn now to page 45 in which the verse entitled "Benedicts Awake" appears? Have you inspected the picture and read the poem? A. Yes.

Q. What is your opinion in respect to that poem? A. I think it is a beautiful poem, in no way lascivious or lewd. It is inspired by the times and I see nothing which could be intended by that article as even suggestive of anything except what is taking place in real life.

186 Q. Do you see anything lascivious or lewd in the repetition of the line in each of the three stanzas, "Men sleeping beside your wives, awake"? A. I do not.

Q. Do you find in literature, many times, references to men sleeping beside their wives? A. I am sure you do.

Q. Do you find anything in that verse which would tend to lower standards of morality? A. I am sure you do not.

Q. Page 123, which is the third item of material attacked in the specification. Have you read the right-hand column starting at the top and running down to the first picture which I believe is the specified material? A. I have.

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Q. That is in a section called Ad Libbing with Esquire, is it not? A. That is right.

Q. And reference is to "Dear Doctor Diddle" and an allegedly humorous interview with patients who come to him. Is that right? A. That is right.

Q. Is there anything lascivious or lewd or filthy or obscene in the use of the word "Diddle"? A. No, not in my opinion. It might as well be "Dr. Fuddydiddy" or something of that kind.

Q. What do you know about the use of the word "diddle", such as "diddling around"? Is there anything indecent about that in your experience? A. No, it is frequently used in my section of the country.

Q. Is there any other reference in that paragraph which to your mind conveys any sort of obscenity? A. No, none.

Q. Is there anything in it which in your opinion is lascivious, lewd, indecent, filthy or obscene? A. No.

Q. And, finally, in this issue, page 137, what is your opinion of the two air-raid wardens looking through the skylight saying, "And to think I gave up drawing," and what comment have you to make on that? A. Apparently, this is the roof of the studio and one can let his imagination go and think maybe there might be a nude model in there and there might be a fully dressed individual there. I see nothing, even with the worst connotation that could be seen. It is all in the mind of the individual.

Q. Do you think that would create a tendency to cause the average normal mind to conjure up some obscenity? A. I do not.

Q. Do you think the publication of that cartoon would tend to corrupt morals or lower standards of right and wrong? A. I certainly do not.

Q. Do you think it is obscene, lascivious, lewd, filthy or indecent? A. No, indeed.

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*Kenneth J. Tillotson—for Respondent—Direct.*

**Q.** That concludes the January issue. Now, in February the only cited material is the Varga girl on page 34—

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Chairman Myers: What does the word "diddle" mean to your mind?

The Witness: We use the word "diddle about", meaning he is a fuddydud, he gets nowhere.

Chairman Myers: It means what?

The Witness: Fuddydud. "Diddling around" means walking around ineffectively. Dr. Diddle might be Dr. Doolittle, not accomplishing much.

It doesn't connote anything else to me.

Mr. Cargill: You say that is used frequently in that sense?

191

The Witness: Oh, yes. The college fellows come in and say, "I have been diddling around," meaning that they haven't accomplished anything; they haven't got anything done in their studies, or something like that.

Mr. Cargill: You would say that they refer to studies when they say that they have been diddling around?

The Witness: They weren't accomplishing what they should have accomplished, wasting time, were ineffective in what they were trying to do. I have heard it used in other connotations.

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Mr. Cargill: So that would not call that to your mind in this instance, would it, Doctor?

The Witness: Not particularly here. I thought of that, naturally, but I didn't think it was specified there for that purpose.

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*By Mr. Bromley:*

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Q. Well, do you find anything in any other conversation between the doctor and his patient which to your mind in any way attempts to carry out the dirty connotation which the word "diddle" might have, as suggested by the member of the board? A. No, I don't.

Q. Do you find any reference to sexual intercourse or sexual impurity in any part of the interviews between the doctor and his patient? A. No.

Mr. Cargill: Did you mean just now that that did come to your mind when you read it?

194

The Witness: It did in discussing it only, not when I read it. It did when I was discussing it with counsel. It was brought to my mind by counsel. It didn't occur to my mind when I read it.

*By Mr. Bromley:*

Q. Now, coming to February, the Varga girl on page 34. You have already covered that. That is the only material cited as obscene in the February issue. There are three items of specified material, and the first is on page 65 and is a cartoon about a sultan and a girl. Do you recall that these sultan cartoons—

195

Mr. Cargill: What page is that?

Mr. Bromley: Pages 64 and 65.

*By Mr. Bromley:*

Q. (continuing)—frequently occur in issues of the magazine? A. I do.

*Kenneth J. Tillotson—<sup>for Respondent</sup>—Direct.*

196 Q. What is the subtitle under that sultan cartoon? A. "What am I bid for this 100 pounds of sugar?"

Q. In your opinion, would that have any adverse effect on a normal human being? A. It would not.

Q. In your opinion, is it obscene, lewd, lascivious, indecent or filthy? A. It is not.

Q. Would it have any tendency to corrupt morals or to lower the standards of right or wrong of the beholder of that cartoon? A. No.

Q. Will you state your reason for your opinion, Doctor? A. I think the subtitle might have some reference to the rationing, a hundred pounds of sugar. I thought it might  
197 be a play on the present tendency for the shortages of sweets, and it certainly does not connote any obscenity.

Mr. Cargill: Doctor, what was the basis for your thinking that that cartoon had any reference to the rationing of sugar?

The Witness: "What am I bid for this 100 lbs. of sugar?"

Mr. Cargill: Yes; in relation to rationing.

The Witness: Well, the individual is very sweet and it might be a play on rationing when sugar was very scarce. It has the dual meaning of the sweetness  
198 of the woman, of womanhood.

Mr. Cargill: So you do read into things the dual meaning there?

The Witness: Sometimes.

*By Mr. Bromley:*

Q. Well, is the dual meaning which is referable to the use of the word sugar as a connotation of the picture of the



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harem girl one which does not create any inference of obscenity in your opinion, in the mind of the observer or the beholder? A. No, it contains a reference to a custom in a certain country where women are bartered. There is a bartering for a woman, but there is nothing lewd or obscene about it.

199

Q. Now, will you turn to the second specified material in this February issue, which is on page 77, at the bottom of the page? The reference is to the cartoon at the bottom of the page and the accompanying text. Now, have you read that whole story? A. I have.

Q. Is it about tenement house Negroes? A. It apparently is.

200

Q. In Harlem? A. In Harlem.

Q. It is of a Negro social worker is it? A. That is right.

Q. It is an attempt at humor; a humorous article, isn't it? A. That is right.

Q. Have you studied especially the picture at the bottom of page 77? A. I have.

Q. Have you read the accompanying text on the left-hand side of that picture? A. I have.

Q. Do you see anything which is obscene, lewd, lascivious, indecent or filthy either about the picture or the text, or both picture and text? A. I do not.

201

Q. Do you understand what the Department could have in mind by claiming obscenity in either or both of those things? A. I do not.

Q. Whatever it is, do you find anything in there which would tend to corrupt morals or lower standards of right or wrong? A. No.

Q. Do you find anything in that article, anywhere, which in your opinion is obscene or indecent or would tend to corrupt morals? A. No.

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Q. And finally, in this issue, page 95, a reference is made to a part of the story "The Unsinkable Sailor." Have you read that story? A. I have.

Q. Briefly, it is describing a somewhat colorful character who was a member of the Merchant Marine who had been torpedoed many times and who, when he got ashore, led a drunken and colorful life? A. It is.

Q. Now, reference is made to several of the paragraphs on that page, and I assume it is meant that the reference is to paragraphs 1, 3, 9, 10, 11, 12, 13, and 16, coming from the top of the page; so I would take it it would be the first full paragraph on that page? A. Yes.

203

Q. Do you find a reference in there to Las Palmas? A. Yes.

Q. Will you read that out loud? A. "So I beat it ashore in Las Palmas. In Las Palmas he went to work as a sort of contact man for an establishment known as The Black Cat, and the less said about that phase of his life, the better."

Q. Now, what inference did you draw from that statement about the reference to The Black Cat? A. I think that means a house of ill fame, house of ill repute, or house of prostitution.

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Q. Making that inference, do you find anything obscene, lascivious, lewd, or filthy about that reference? A. No, I don't.

Q. Do you think that sentence would tend to corrupt morals or lower standards of right or wrong? A. No.

Q. Do you find anything in the paragraph upon which objection could be made on any of those grounds in the slightest degree? A. I do not.

Q. Take the next paragraph, which is No. 3. A. "Take the deck?"

*Kenneth J. Tillotson—for Respondent—Direct.*

Q. It starts: "I take the deck." A. "I take the deck at a union meeting"—

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Q. You need not read it all. Is it a fact that having read it, the only possible thing to be drawn from that paragraph is the use of the word "sonovabitch"? A. That is right.

Q. And there the word is spelled how? A. Sonovabitch.

Q. It is in a quotation, something that the man or somebody else said? A. That is right.

Q. Judged by a person like yourself, is there anything obscene, lewd, lascivious, indecent or filthy about the use of the word in print spelled that way or any other way?

A. No, there is not.

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Q. Do you find constant repetition of it in books such as those by Hemingway and others? A. A great many books have it correctly spelled.

Q. 9 is the next one? A. Yes.

Q. It is the one on the second column beginning "I got in a little trouble." A. Yes.

Q. Now, did you find anything in that paragraph or in 9, 10, 11, 12, and 13, the four which follow it, which is obscene, lascivious, filthy, lewd or indecent? A. I did not.

Q. The reference is, is it not, to the fact that the sailor was asked by the doctor to get a sample of urine and he left it in the hotel manager's safe? A. That is right.

207

Q. Is there anything else in those four paragraphs to which objection might possibly be taken by anyone, in your opinion? A. No.

Q. Now, is there anything in that reference which is obscene, lewd, lascivious, indecent or filthy? A. No.

Q. Is there anything in the reference to those five paragraphs, 9 to 13 inclusive, which, in your opinion, would corrupt morals of the reader or lower standards of right and wrong? A. There is not.

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Q. That concludes the February issue. Now, will you take the March issue? As in the case of the February issue, the only matter cited as obscene in the issue is the Varga girl on page 36.

Mr. Hassell: Might I interrupt counsel? You mean you have reference to that as mentioned in the citation?

Mr. Bromley: Yes, sir.

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Mr. Hassell: The citation also covers similar matters and I have given counsel a list of those matters which I have handed up to the Board. The contention is that they are all obscene.

Mr. Bromley: I didn't hear that.

Mr. Hassell: That they are not all the obscene matters in this magazine.

Mr. Bromley: What is that?

Chairman Myers: He said that they are all obscene.

Mr. Bromley: We will go to the others.

*By Mr. Bromley:*

210

Q. In the March issue on page 9, there is an advertisement of the Literary Guild. Have you studied that advertisement? A. I have.

Q. Are you familiar with the Thorne Smith books that are advertised? A. Moderately. I have read some of them.

Q. Do you see anything in that advertisement that is lewd, lascivious, obscene, indecent or filthy? A. I do not.

Q. Do you know anything about the standing of the Literary Guild of America, Incorporated? A. I believe it has a very high standing in our community.

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Q. What would you say about whether or not that ad exceeds the standard of advertising which has existed for years and now exists with reference to books, Doctor? Books by Rabelais and De Maupassant and others of that class? A. It looks very much like the ads for De Maupassant, Rabelais and others.

211

Q. Your experience—

Mr. Hassell: I don't like to interrupt counsel, but I don't believe this witness has yet qualified as an expert on advertisements.

Mr. Bromley: I think that is right. I have gone too far and I will start all over again.

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*By Mr. Bromley:*

Q. Now, is there anything in the text of that advertisement which, in your opinion, is lewd, lascivious, obscene, filthy or indecent? A. There is not.

Q. Or any of those pictures, no matter how small they are drawn there in pen and ink, in your opinion are any of those pictures properly within the classification of the five words which I have just used? A. They are not. They are not lewd, lascivious, or obscene or filthy.

Q. Do you find anything in the whole ad, pictures and text, as a whole, which would tend to corrupt morals or lower the standards of right or wrong? A. I do not.

213

Q. Page 10 has a letter to the editor at the bottom of the second column, which is entitled "On Putting Eskey in a Cap and Gown." Have you read that letter? A. I have.

Q. Is there anything obscene, lewd, lascivious, indecent or filthy about it? A. I don't find anything that is, no.

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Mr. Hassell: At this point I might state, to have the record clear, that the attention of the Board was not called to this as being obscene. The idea is to have the Board get the appraisal of this publication as given by the publisher itself, since it reproduces this comment on what appears in the magazine.

Mr. Bromley: Now, Mr. Hassell confuses me. You told me a minute ago that everything you specified was obscene in this issue. Now you say that everything is not obscene.

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Mr. Hassell: I will have to withdraw that. There are a few items, and I will name them for counsel if he desires.

Chairman Myers: I don't see anything wrong with someone from Indiana.

Mr. Bromley: It couldn't possibly be, no, sir.

Mr. Hassell: There are a few items that I propose to call the attention of the Board to by reason of the fact that they reflect just what the publishers of this publication seem to think their publication has in its effect on its readers and Esquire's reputation among its readers as shown by the material under the editorial "Shor Nuff", referred to by counsel on page 6 of the January issue.

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The matter appearing on page 10, which is this matter in the March issue.

The material appearing on page 10, "The Sound and the Fury" in the July issue, "So, I'm willing to pay my half buck just for a peek at the Hurrells and Vargas."

The matter appearing on page 10 of the August issue, "The Sound and the Fury."

The matter appearing on page 10 of the September



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issue, "The Sound and the Fury", "Conservative suggestion."

The matter appearing on page 10 of the October issue, "The Case of the Classy Chassis."

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Chairman Myers: Proceed.

*By Mr. Bromley:*

Q. Well, Doctor, did you read the letter? A. I have read the letter.

Q. In your opinion, is that the expression of a reader's opinion that "Esquire" is obscene? A. It is not.

Q. Now, let us go to the next Sultan cartoon. A. What page?

Q. Page 49. That is the cartoon with the harem girl and the two soldiers. What is the sub-title under that? A. "I wonder how the Sultan knew this was my birthday." Apparently this girl is—this is in the Orient and this girl has gone from one place to another, which may be from the palace in the background there, and the soldier on guard has intercepted this girl and it happens to be his birthday, and he looks surprised. It seems to me to be rather an innocent thing. I see nothing suggestive or vulgar in it.

218

Q. Is there anything about the picture of the harem girl which, in your opinion, is lewd, lascivious, filthy, indecent or obscene? A. There is not.

Q. Is there anything about the entire picture which, in your opinion, would tend to corrupt the morals of the average person or lower the standards of right or wrong? A. There is not.

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Q. Or to incite thought of sexual impurity? A. No.

Q. On page 68, Mr. Seldes has some reference to advertising perfume and clothing, particularly paragraphs No. 4 and

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6 on that page. Have you read the whole article? A. I have.

220 Q. How would you describe the article, briefly? A. I think it is a very good article, trying to do precisely what it does. It tends to debunk the allure of suggestive clothing and perfumes that have suggestive names. It seems to me to be in the nature of an editorial.

Q. Now, coming down to paragraph 4, that is the one in the second column, "Now it is a rare odd thing that clothes which do enhance the sexual attractiveness of women are sold to them for smartness." A. That is true.

Q. Have you read that paragraph? A. Yes.

Q. Do you see anything in that which is obscene, lewd, lascivious, indecent or filthy? A. I do not.

221 Q. Do you understand how any suggestion could be made by anybody that it was obscene? A. I do not, frankly.

Q. The next reference is to paragraph 6, which is in the third column, beginning "When we approach the young of the species, the innocents of college, we are a little franker. A 'show off V-neck' or a 'skirt pleated for action' (on a bicycle, so be quiet)," and so forth.

Would a reference to the term "fly-front" mean anything? Do you find anything obscene, filthy, lewd, lascivious or indecent in that paragraph? A. I do not.

222 Q. Is there anything obscene about the words "fly-front"? A. Not in my opinion. It is frequently used. I think it has no—it is used in advertising clothing; it is used in everyday conversation. I see nothing suggestive or lewd or vulgar about it.

Q. Is there anything in that paragraph which in your opinion would corrupt morals or lower the standards of right or wrong or incite or stimulate thoughts of sexual impurity? A. No, nothing whatsoever.

Q. Finally, page 107, the full page hillbilly cartoon. A. Yes.

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Q. Will you read the sub-title under that cartoon and give me your comment as to what you think about it? 223

A. "Seems like somebody's allers clamorin' to somebody to open up a second front, don't it?" I suppose reference is made to the infant on the floor who is crying and the woman is nursing a child. It is in a hillbilly community. Other people don't do that in public, some do. I see nothing obscene about it, however; it is an ordinary biological function to be carried out.

Q. Have you any opinion as to whether it is in good or bad taste? A. Well, I would say it is poor taste, yes.

Q. Now, do you think it has any tendency to corrupt morals or to lower the standards of right or wrong in an average person or incite thoughts of sexual impurity? A. I certainly do not. 224

Q. Do you think it is filthy, obscene, lewd, lascivious or indecent? A. I do not.

Q. That brings us to the April issue, on which, again, in the citation there is reference only to the Varga girl and the verses which accompany it on page 38. You have already testified with respect to both and given your opinion.

Now, going to the specified material, the note says: "Front cover; breasts of female figures over-emphasized." I assume that means the figures, and I assume it means both figures because there are two figures. 225

What opinion can you give us with respect to that cover, especially with respect to the reference to the exaggeration or over-emphasis of the breasts? A. Well.

Mr. Bromley: I am referring, if the Board please, to the cover on the magazine.

Chairman Myers: Yes.

Mr. Bromley: The reference is to the fact that the breasts of those two caricatures are over-emphasized.

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A. Well, so are all the features, the eyes, the lips, and the moustache of the man and the bulging eyes of Eskey. That is what it is supposed to be, an exaggeration of the whole thing. If one takes those breasts out of the setting, that is, if it was just that and everything else is not exaggerated, one might be attracted to that, but frankly, I would not be attracted to those at all unless they were specified. I think the average individual looking at it would not think anything too much about it.

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Q. What do you mean, unless they were specified? A. Unless attention was drawn to them that they are over-emphasized. I simply take it for granted that the whole thing is emphasized, that the breasts were over-emphasized and everything else. If the breasts were over-emphasized and nothing else, then the whole context would be different, wouldn't it? I see nothing lewd or obscene in the way it is presented.

Q. Do you see anything filthy about it? A. No.

Q. Do you think it would have a tendency on the average human being to corrupt his morals or lower his standards of right or wrong or arouse or stimulate thoughts of sexual impurity? A. I am sure it would not.

228

Q. The only other reference is to page 60 of an article by Edmund Gilligan, "The Court of Lost ladies." A. I remember that very well. That is a very good article, in my opinion and estimation. It is the kind of article that does a good deal of good. I have had several adolescents speak of this article. It is informative; it narrates precisely what goes on in our night courts. It shows up the prostitute in a true light and shows respect for law and order and to the court. The judge is held up in a very favorable light and high plane as he should be for this kind of work.

I think it is a very good article. It has a very good moral

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influence on the college man and the high school boy. As a matter of fact, my own son, who is an adolescent, commented on that article.

Q. How old is he? A. 14.

Q. Did he read the article? A. He did.

Q. Did you have any objection to his reading it? A. I did not. In fact, I think these are good for him. I think they show up the tendencies of the times and the way in which the average adult and adolescent receives things outside.

Q. Now, is there anything in that article which you think is indecent, lewd, lascivious, obscene or filthy? A. Nothing.

Q. Is there anything in it which you think would tend to corrupt morals or lower the standards of right or wrong or stimulate thoughts of sexual impurity? A. No, just the opposite.

Q. Now, I come to the May issue of the magazine, page 38, the Varga girl is cited as obscene. The picture you have already covered in your testimony.

On pages 86 and 87 we have the first example of the comic strip. Did you read that comic strip, which consists of a number of separate pictures? A. I did.

Q. Now, you notice what has been specified is pictures 29, 30, 31, and 32 as similar and related material. Now, have you studied that especially? A. I have.

Q. Directing your attention to 29, do you find anything indecent or filthy or lascivious or lewd or obscene in the picture, of a naked woman standing in the water up to her waist with Eskey looking over the bushes at her? A. No, because there is nothing exposed there that would make the picture indecent.

Q. Can you tell us from your study of this comic strip as to what its effect was? As to whether it was satire on

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existing comic strips? A. I suppose that is what it was supposed to be, a satire on existing comic strips, and that is about all.

232

Q. Now, will you look at the text under 29, which begins under 28, "The lady dislikes men but wants a baby, so I sold her a ticket for the time when women can become pregnant by taking an electric shock."

Is there anything obscene or indecent or filthy or lewd or lascivious in that sentence? A. No, and I assume that that is satire and I think that we are now using electric shocks for the treatment of a great many emotional disorders as a recognized form of treatment, and in that connection it certainly could not be anything but true.

233

Q. Hasn't it also a reference to those comic strips which portray occurrences many, many years in the future, for centuries to come? A. That is right.

Q. So the reference to "I sold her a ticket for the time when women can become pregnant," that means transferred to the future, does it not? A. That is right.

Q. Now, do you find anything in 30, 31 and 32 which is obscene, indecent, lewd, lascivious or filthy? A. Neither in the text nor the accompanying pictures.

Q. Do you think there is anything in the text or pictures, or both, which would tend to corrupt morals or lower standards of right or wrong or arouse sexual thought, sexual impurity? A. I do not.

234

Q. Now, on page 32 is some more similar material, according to the specification, and the first one is an article by Paul Gallico entitled "The Savage Beast in Us." Have you read that article? A. I have.

Q. And the sub-title is what? A. "Dispelling the hopes of burlesque entrepreneurs and fears of censors that the strip has sensory appeal." It seems to me that that was a good



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article as debunking the burlesque and showing it up for just what it is, and being rather discouraging to the adolescent young man or old man or any man who spends \$4.40 for a ticket for something that they don't get. By that, I mean that burlesque is debunked here. It is a very good editorial type of article. I see nothing objectionable in that. 235

Q. Do you find anything indecent, obscene, lewd, lascivious or filthy in the accompanying illustrations? A. I do not. That is precisely what you see on burlesque billboards and I dare say these are copied from the burlesque boards.

Q. Is there any reference in the text which you think would be indecent, lewd, lascivious, obscene or filthy? A. Definitely not. 236

Q. Is there anything about the article as a whole—

Mr. Cargill: What was the witness' answer about not seeing something in the article?

The Witness: I don't see anything lascivious or lewd in the pictures. They are apparently copies of pictures taken from billboards. In my opinion, I think the whole thing was written to show burlesque as cheap and unattractive.

*By Mr. Bromley:*

Q. Now, on page 48 is a cartoon which shows two airplane spotters on a roof at night. What is the sub-title? A. She looks more like a B-17 than a P-40." 237

Q. Have you any understanding as to how anybody could specify that as being obscene? A. I do not.

Q. Do you know that a B-17 is a bomber and a P-40 is a pursuit or fighter plane? A. I do know now. I didn't know before. I didn't know that from reading it.

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238 Q. Do you get any possible connotation about what they are looking at from what they are saying or seeing? A. No. I don't.

Q. Do you think the normal average mind would conclude from that picture that they were observing something filthy, indecent or obscene or lascivious? A. No.

Q. Do you find anything in the picture which would tend to corrupt morals, in your opinion, or lower standards of right or wrong or stimulate impure sexual thoughts? A. I do not.

239 Q. Finally, on page 93 there is a picture from a Broadway show "The Eve of St. Mark." Did you see that show? A. I did not.

Q. Did you read the text in the lower right hand box? A. I did.

Q. Have you studied the picture? A. I have.

Q. Now, do you see anything in the text or the picture, or both together, which is indecent, lewd, lascivious, filthy or obscene? A. I do not. It represents, to my mind, the social relationship of a fine young type of woman with their soldier friends who have returned, or perhaps hostesses who are entertaining soldiers, and I can see nothing obscene, lewd or lascivious about it.

240 Q. Do you know that that represents an actual scene from the show? A. I have been told that it does.

Q. Do you know that the accompanying text describes the actual scene from the show? A. Yes, it is my understanding that it does.

Q. Do you know that the show had a long, successful run on Broadway? A. Yes, I have been told that it did.

Q. That concludes that issue. Now, in the June issue we have, on page 34, the Varga girl which you have already discussed, and the one other reference in that issue is on page

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134 to an article numbered 2, in the middle of the page, and entitled "Libel suits were as wine to that hell firin' editor of the old west, Dave Day." A. Yes. 241

Q. Have you read that article? A. I have.

Q. Have you noted especially the reference near the bottom of the first column to social items? A. The epitaph?

Q. No, to social items. A. Oh, yes.

Q. Will you read that reference, "Social items on the first page, included such as these:

"Two weddings are on dit for next week. This weather kind of suggests two in a bed, spoon fashion."

"An epitaph: 242

'Here lies the body of poor old Charlotte.

Born a virgin, died a harlot.

For 18 years she kept her virginity,

An all-time record in this vicinity.' "

A. Well, that is a familiar epitaph with various modifications. I heard it when I was a boy many times.

Mr. Hassell: In New England?

The Witness: In New England. I would say it is poor taste, but I don't think it is going to corrupt any one's morals. 243

*By Mr. Bromley:*

Q. Do you think it would tend to lower the standards of right or wrong or stimulate thoughts of sexual impurity?

A. No, I don't.

Q. In your opinion, is it obscene, lewd, lascivious, indecent or filthy? A. No.

Q. Now, the description is of a colorful far-western editor of a small newspaper, isn't it? A. Yes.

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244 I think one has to take that as it is. It describes a small town newspaper and town as a frontier, primitive, uncultured community, and in that setting I think it goes into the category of descriptive or narrative only.

Q. That brings us to the July issue of the magazine, and on page 76 there is a picture which has a caption, "Broadway for the boys," it is a scene from "By Jupiter," which was a musical comedy. A. I saw that.

Q. You did see it? A. Yes.

Q. It was a musical comedy, wasn't it? A. Yes.

Q. You recognized that as an actual scene from the show, didn't you? A. I did.

245 Q. Is there anything obscene, lewd, lascivious, indecent or filthy about that picture? A. No.

Q. Or in the pose of the girl in the foreground? A. No.

Q. Is there anything about that picture which would tend to stimulate thoughts of sexual impurity? A. Not in my opinion.

Q. Lower standards of right or wrong or corrupt morals? A. No.

Q. The text is not cited, so I assume there is no need to refer to it.

246 Now, at page 146, which is one of the advertisements cited by the Department, an advertisement of postal cards containing Varga drawings. Have you studied that? A. I have.

Q. Is there anything within the text which comes within any of the condemnatory words which I have used? A. None, nothing.

Q. Is there anything in the pictures? A. No.

Q. I direct your attention to the middle picture, of the girl stretched out on the back of the card. A. Yes.

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Q. In your opinion, is that picture lewd, lascivious, obscene, indecent or filthy? A. In my opinion it is not.

Q. Is there anything about it which would tend to corrupt morals or lower standards of right or wrong or stimulate thoughts of sexual impurity? A. In my opinion it would not.

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Q. Will you state your reasons for that, Doctor? A. Because it is a very frequent pose of individuals taking a sun bath, and the erogenous areas are covered, and it simply shows the back with the erogenous areas covered of an individual. Again, the hair is featured here, which is one of the attractive features of the feminine beauty; hair of the head.

Q. Now, I show you under the heading of specified material a letter at page 10, which counsel states he cites only as indicating the opinion of one of our readers of our magazine, which we publish as part of our correspondence with our readers.

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Do you see anything lewd or lascivious in that? A. I do not.

Q. That has the reference, has it not, "I am willing to pay my half buck just for a peek of the Hurrells and Vargas." A. Yes. I assume that peek, you might just as well use the word "look."

Q. Do you find any lascivious or lewd connotation in his use of the word "peek"? A. I do not.

249

Q. The Hurrells are photographic studies of women which sometimes appear in the magazine, are they not? A. They are.

Q. The next item which is specified is the second and last comic strip at page 87, numbers 55 and 56 of that comic strip, on the right hand page. Have you examined those pictures? A. I have.

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Q. With the text underneath them? A. Yes.

250 Q. Can you see anything in the text to which objection on any of the grounds I have mentioned might possibly be made? A. I do not.

Q. What about this reference "Esky turned to Verne: 'Say, there's something I've always wondered about mermaids.' 'I wouldn't know,' replied Verne."

Now, directing your particular attention to that, what comment have you to make on that? A. Of course, a variety of one's imagination can be turned to all sorts of possibilities. He might wonder how mermaids get along out of the water because they have no legs. I see nothing lewd or obscene about it.

251 Q. Now, is there anything in the text under 56 which has any tendency in that direction as you see it? A. None, nothing.

Q. Is there anything about either of the illustrations which you consider to be indecent, lewd, lascivious, filthy or obscene? A. Nothing.

Q. Anything about the two sections taken together, alone, or in their setting which would tend to corrupt morals, lower the standards of right or wrong or arouse thoughts of sexual impurity? A. No, nothing.

Q. At page 141 is a poem: "Dog's worst friend." Have you read that poem? A. I have.

252 Q. What comment have you to make about that, at the top of page 141? A. I think it is rather silly, but I see nothing really objectionable in it.

Q. Do you see anything filthy, lewd, lascivious, obscene or indecent in it? A. I do not.

Q. Do you think it would tend to lower standards of right or wrong or incite to sexual impurity? A. I do not.

Q. Or corrupt morals? A. I do not.



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Q. On page 148, at the bottom of the page is a short black and white cartoon. A. Yes.

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Q. What is the sub-title? A. "I think, Miss Hill, it might be advisable to display those a little farther apart." There are two cards on the counter with "Burning desire" and "Baby's breath," both apparently advertising perfume.

Q. Now, in your opinion, is there anything obscene, lewd, lascivious, indecent or filthy about that? A. Nothing.

Q. Do they have a tendency to corrupt morals, lower standards of right or wrong, or incite thoughts of sexual impurity? A. No, in my opinion, no.

Q. That brings us to the August number, in which there is cited at page 10 a letter to the Editor entitled "Considered Opinion."

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Have you read that letter? A. I have.

Q. Now this is a letter which, in spite of Mr. Hassell's statement, or perhaps because of it, I understand to be cited as obscene.

Mr. Hassell: Yes, that is true, counsel.

*By Mr. Bromley:*

Q. Have you read the letter? A. I have.

Q. In your opinion, is there anything obscene, lewd, lascivious, or filthy about it? A. No.

255

Q. In your opinion, would it have any tendency to corrupt morals or lower standards of right or wrong, or incite sexual thoughts of impurity? A. In my opinion, it would not.

Q. Do you recognize the reference in the first sentence as something, as part of another item that you saw? A. Yes. "Broadway for the Boys," I think.

Q. That is from the show, "The Eve of St. Mark," is it not? A. That is right.

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256 Q. Now, while we are on this page, there is another letter which is not cited as obscene but specified and that is "Prayer For a Paper Shortage." Over on the right hand column, with a photograph of a woman. A. Yes.

Q. Have you read that? A. I have.

Q. Have you any idea, Doctor, why anybody would specify that letter as obscene or indecent? A. I do not.

Q. Do you see any reference in it or in the position of the photograph or anything about the photograph which would possibly be considered as obscene, lewd, lascivious, indecent or filthy? A. I do not.

257 Q. Would your answers with reference to this letter be the same as were given regarding the other letters, so far as its tendency to corrupt morals, lower standards, and incite sexual impure thoughts? A. It would.

Mr. Hassell: Counsel, that is one of the articles I referred to as reflecting the reputation that "Esquire" seeks from its readers.

Mr. Bromley: Would you mind telling me what part of that letter?

258 Mr. Hassell: "Darn that Varga guy and his beautiful girls! ! Flesh and bone competition is bad enough nowadays; but when a 'gal' on paper enters the race—something is wrong somewhere! ! !"

"How in the devil do you think I felt when my 'one-and-only' opened his wallet and the first thing I saw was a Varga girl's chassis where mine used to be!

"Have a heart, Mr. Varga, those full-page Esquire beauties are trouble enough, but when it comes to wallet sized ones—darn it, something has to be done!

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"P. S. Like the lady from Bangor, Maine in the June issue I don't dare sign my name—and if you print my letter I hope to heck you leave the city and state out, too."

259

Chairman Myers: She must be from the District of Columbia.

*By Mr. Bromley:*

Q. Well, on page 30 is an article entitled "Many Wives Too Many." Have you read it, Doctor? A. I have.

Q. What is your opinion on it? A. I think that is a satire and I think it is rather good, showing some of the pitfalls "to that sporting but foolhardy professor who advocates plural marriage in England". I think it is a take-off on polygamous tendencies, and I think it carries a moral.

260

Q. Now, it was a fact, was it not, that Doctor Joad of London had written an article in which he had advocated plural marriage in England? A. That is right.

Q. And this writer David Emory rather takes him to task and pokes fun at him? A. That is right.

Q. Is there any expression or word or phrase used in the article which is obscene, lewd, lascivious, indecent, or filthy? A. No.

Q. Is the article as a whole subject to designation by anyone or all of those five words? A. No.

Q. Is there anything about the article which would tend to corrupt morals, lower standards of right or wrong or incite thoughts of sexual impurity? A. Nothing whatsoever.

261

Q. Now, on page 89 there is cited as obscene the "Paste your face here" picture. Have you looked at that? A. I have.

Q. What is your opinion of it? A. I see nothing suggestive or obscene about it. It is the sort of thing that might

*Kenneth J. Tillotson—for Respondent—Direct.*

262 take place with a sailor and his girl on the beach. I think there is a series of these. Taken in the series or taken alone it certainly does not suggest anything obscene or lascivious. It is pretty much in line with the things we used to see at the beach, where a man got in a frame and had his picture taken, and there would be the body of someone and he would stand behind it and the picture would be photographed, showing his uniform.

263 Mr. Bromley: I would like to show the Board the other two, the one in June and the other in September, which were on both sides of this one. It is the same principle. Neither one of these are complained of in any respect at all. It is just the one sitting on the shoulders of the sailor, but these three make up the series so far as 1943 is concerned.

*By Mr. Bromley:*

Q. Now, will you turn to page 73, which was specified, the photograph entitled "Mood for red hair". A. Yes.

Q. What is your opinion of that picture, Doctor? A. My opinion is that it is a beautiful and artistic representation of a photograph of a young woman.

Q. Do you find any indecent exposure there? A. Nothing whatsoever.

264 Q. Is there anything about the picture in your opinion which is indecent, filthy, lascivious, lewd or obscene? A. Definitely not.

Q. Is it obscene in your opinion? A. No.

Q. Is there anything about it which would tend to corrupt morals, lower standards of right or wrong or incite thoughts of sexual impurity? A. No.

*Kenneth J. Tillotson—for Respondent—Direct.*

Q. On page 90 there is a cartoon showing the girl working at a machine in a factory with her wedding dress on. What is the sub-title? A. "She came directly from the wedding—boy! That's patriotism". 265

Q. Do you find anything obscene, lewd, lascivious, indecent or filthy about that? A. I do not.

Q. Is there anything there in your opinion which would corrupt morals or lower standards of right or wrong or tend to arouse thoughts of sexual impurity? A. Nothing whatsoever.

Q. What comments can you make about the picture? A. Well, I think it is just what it says, what it speaks of. "That's patriotism". The young lady who has had time to get married rushes back to her factory without taking her wedding gown off and she is working apparently at a war industry. I think it is quite in keeping with the times. 266

Q. Nothing else on that page that is either specified or cited.

Now, on page 105 there is another cartoon which shows some native girls with an emaciated man on his knees grasping a tree and a rescuing sailor paddling up to him and the sub-title is what? A. "Thank God. Help at last."

Q. Do you find anything obscene, lewd, lascivious, indecent or filthy about that? A. No, I don't.

Q. In your opinion would it have any tendency to corrupt morals, lower standards of right or wrong, or incite thoughts of sexual impurity? A. It would not. 267

Q. Do you consider that funny, Doctor? A. Somewhat, yes.

Q. Page 110, the cartoon in the medical field showing a young good looking nurse in an abbreviated uniform. What is the sub-title? A. "That's Miss Blimpton, our special nurse for low-blood pressure patients". I would say that was quite innocent.

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268 Q. On page 127 is a cartoon, on the right page, of a young lady painting stockings on another girl who is lying on her back with her leg in the air. A. That is right.

Q. What is the sub-title? A. "Hew to the line, Bertha. Let the skirts fall where they may".

Q. Do you get any obscene connotation from that? A. No, I don't.

Q. Do you understand how anybody could get a filthy meaning out of that picture? A. I don't.

Q. The stocking is being painted on both legs about as high as an ordinary stocking, isn't it? A. That is right.

269 Q. The girl is in a bathing suit? A. That is right.

Q. Isn't she at least in a halter and trunks? A. That is right.

Q. Now, is there anything obscene, lewd, lascivious, indecent, or filthy about that? A. No.

Q. Now, the matter under it is fashion matter, isn't it? A. That is right.

Q. This is a fashion page, isn't it? A. That is right.

Mr. Hassell: For men?

Mr. Bromley: For women.

*By Mr. Bromley:*

270

Q. The editor's note says: "Esquire will accept no responsibility for what may happen if male readers fail to tear off the bottom of this page before letting their female dependents see it." A. Well, it is, after all, like all of these cartoons. They are for men. It is not even risque; it is humorous; it appeals to men.

Q. Finally, on page 144 reference is made to an article entitled "Offensive on the Home Front." Did you read that article? A. I did.



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Mr. Bromley: I would like to know, Mr. Hassell, if you don't mind telling me now, just what it is in that article you don't like. I can't find it.

271

Mr. Hassell: I would be glad to read it to counsel.

Mr. Bromley: Thank you.

Mr. Hassell: Third column at the bottom of page 144. "He noticed how large the uniform made her behind look."

Mr. Bromley: Would it have been all right if it said "Made her look behind"?

*By Mr. Bromley:*

272

Q. Doctor, do you find anything obscene, lewd, lascivious, indecent or filthy in this reference which has just been read to you? A. I do not.

Q. Do you think this reference or the references in the article would have any tendency to corrupt morals, lower standards of right or wrong or incite thoughts of sexual impurity? A. I do not.

Q. That brings us to September, in which the only cited material is the Varga girl on page 38, which you have already covered.

Mr. Hassell: There is specified material.

273 .

*By Mr. Bromley:*

Q. On page 10, there is, specified material from the Sound and the Fury. Have you read that? A. "Conservative suggestion." Yes, I have.

Q. Now, the last paragraph has: "Why doesn't he"—meaning Varga—"leave them as they are, thereby cooperating

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in this national emergency by conserving paint," and the first paragraph reads: "Recently I have read that Varga paints all his models in the nude and after that puts their clothes on. (I mean the pictures, of course)."

Now, is there anything obscene, lewd, lascivious, indecent or filthy about that letter? A. I see nothing.

Q. Now that Mr. Hassell has cited as obscene and not as showing what somebody thinks of us.

275

Mr. Hassell: That is cited as showing what subscribers consider "Esquire" to be. "My passion for Varga girls goes almost to the extreme." And the balance you read.

Mr. Bromley: Will you read that?

(Record read.)

Mr. Hassell: It goes ahead: "A spot has been reserved on my wall to deposit such a dish."

Mr. Bromley: There is nothing like that in my copy.

Mr. Hassell: This is on page 10: "The case of the classy chassis."

276

Mr. Bromley: I had directed your attention to "Conservative suggestion" in the middle of the third column.

Mr. Harding: You are in the wrong issue.

Mr. Hassell: I beg your pardon? October?

Mr. Harding: September.

Mr. Hassell: I beg your pardon?

Mr. Bromley: "Conservative suggestion."

Mr. Hassell: That has reference to the reputation that "Esquire" seeks for itself and the desire of the reader for more news.

*Kenneth J. Tillotson— for Respondent—Direct.*

*By Mr. Bromley:*

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Q. What is your opinion on that letter, Doctor? A. Well, I see nothing about that letter that is suggestive. It is the opinion of one individual who signs his name "The Height of Expectation." He may be a sexual pervert, of course; in fact, he speaks more like the pervert type, according to my experience. You might find in all sections of the country quite a number of people that would send in that kind of letter, among the lewd and psychopathic personalities, but, after all, that is one letter, isn't it?

Chairman Myers: Mr. Bromley, if it is convenient to stop now, some of us have a great deal to do. Suppose we adjourn until 10 o'clock tomorrow morning, unless you have some reason to the contrary.

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Mr. Bromley: Not at all.

Chairman Myers: Therefore, we will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 5:00 p. m., the hearing was adjourned until 10 o'clock a. m., Wednesday, October 20, 1943.)

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# HEARING OF OCTOBER 20, 1943.

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## PROCEEDINGS RESUMED.

Chairman Myers: You may proceed.

KENNETH J. TILLOTSON, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

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*Direct Examination by Mr. Bromley (Continued):*

Q. May it please the Board, I direct your attention, Doctor Tillotson, to the September issue; particularly page 43. That is the cartoon there. Have you examined the cartoon appearing on that page? A. I have.

Q. In your opinion is that cartoon obscene, lewd, lascivious, filthy or indecent? A. It is not.

282

Q. Do you see anything about the cartoon which, in your opinion, would tend to corrupt morals, lower standards of right and wrong with regard to the sexual relation or stimulate impure sexual thoughts? A. I do not.

Q. Have you any comment to make on the cartoon, Doctor? A. Well, the "Sold American", is a play, I gather, on the Lucky Strike, sold American radio idea. This old sheik here wants to please this soldier here, so he is remarking "Sold American". He has got that American phrase which he has picked up in order to entertain the soldier.

*Kenneth J. Tillotson—for Respondent—Direct.*

Q. I call your attention next to page 65. A. Yes.

Q. Are you familiar with and have you examined the cartoon on that page? A. I have.

Q. With respect to that page would your answers be the same to the questions I asked you regarding the cartoon on page 43? A. Yes.

Q. Will you turn over the page to page 66. Have you examined the cartoon at the top of page 66? A. I have.

Q. Would your answers be the same to the same questions with respect to that cartoon? A. Yes.

Q. Turn to page 84, please. A. Yes.

Q. Have you studied and examined that cartoon? A. I have.

Q. Would your answers to the same questions be the same, Doctor? A. Yes.

Q. On page 86, have you read the contents of pages 86 and 87 under the title "Gold Bricking with Esquire"? A. I have.

Q. I believe that there is specified on those two pages only two of the many jokes reproduced from Army camp papers, and the first one is at the bottom of the left-hand column on page 86, beginning "A sergeant was home on emergency furlough" and ending up "See, blue booties".

Is there anything in that reproduced joke or the text thereof which, in your opinion, is indecent, lewd, lascivious, obscene or filthy? A. There is not.

Q. In your opinion, would that text stimulate the average normal person to impure sexual thoughts or have a tendency to lower the standards of morals? A. No, indeed.

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Q. Now, the next of the three items appears at the bottom of the third column on page 87 and is reproduced from Arizona Contact, Phoenix, Arizona:

"She: 'Would you like to see where I was operated on for appendicitis?'"

"He: 'No, I hate hospitals.'"

Do you consider that joke to be indecent, lascivious, lewd, obscene or filthy? A. I do not.

Q. Do you see anything in it which would tend to corrupt morals or lower standards of right and wrong or stimulate impure sexual thoughts? A. I do not.

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Q. I notice now that those are the only two items specified on those two pages and I was wrong when I said there were three; there are only two.

Will you turn over to page 102 of the September issue? A. Yes.

Q. Are you familiar with that cartoon and have you studied it, Doctor? A. I have.

Q. Is there anything obscene, filthy, indecent, lewd or lascivious about that, in your opinion? A. No.

Q. In your opinion, has it any tendency to corrupt morals, lower standards of right and wrong in regard to sexual relations or stimulate impure sexual thoughts? A. It has not.

288

Q. Will you turn your attention to the October issue, please? There is there specified as obscene, first, the Varga girl on pages 43 and 44 as to which you have already testified fully. Will you, therefore, turn to the second item of cited material, page 49? Are you familiar with the cartoon appearing on that page? A. Yes.

Q. In your opinion is there anything about that cartoon



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which is obscene, lewd, lascivious, filthy or indecent? A. No.

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Q. In your opinion, is there anything about that cartoon which would stimulate impure sexual thoughts, tend to lower the standards of right and wrong with regard to the sexual relation, or have a tendency to corrupt the morals of the average normal person? A. No.

Q. Will you turn to the third item which is on page 38? That article is entitled "Wise Men Pick Pyknic Girls", by J. George Frederick. Have you read and studied the article?

A. I have.

Q. What comment have you to make about it, if any?

290

A. That is a very good popularized version of a well-known scientific article. The material that is based on is originally Kretschmer's material in which he tries to correlate personality with body building and the leptosomes refer to the tall, athletic figures.

This has been discussed in scientific literature a good deal and this is an honest and serious attempt to give the mass of readers an idea in a straight-forward way of the personality relationships in body structure.

It is based on real scientific material that we are concerned with, and psychiatric studies and researches, and I think this has gone a long way toward giving the public a pretty accurate account of material that is considered scientific.

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Q. Is the word "Pyknic" a scientific word? A. It is.

Q. It is not, then, a play upon the word "picnic"? A. No.

Q. And is the word "leptosome" a scientific word? A. It is.

Q. Do you find any reference in any part of that article

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to anything which is, in your opinion, lewd, lascivious, filthy, indecent, or obscene? A. I do not.

Q. In your opinion, would this article have any appreciable effect on any normal person by way of tending to corrupt his morals or lower his standards of right or wrong or stimulate him to impure sexual thoughts? A. None whatsoever.

Q. The next item cited as obscene appears on page 93, items 2, 3 and 17. Again there is a double-page spread of jokes reproduced from Army camp papers. Is that right? A. That is right.

293

Q. Under the title "Goldbricking with Esquire" A. That is right.

Q. And the first one appears on page 93, the left-hand column, second from the top, beginning "Five times the beautiful woman stared invitingly," and ending "Don't bother me, Madam, liquor is my weakness."

Have you read that joke? A. I have.

Q. Is there, in your opinion, anything obscene, lascivious, lewd, filthy, or indecent about it? A. There is not.

Q. In your opinion, would the reproduction of that joke have any tendency to stimulate impure sexual thoughts, lower standards of right and wrong, or tend to corrupt morals? A. It would not.

294

Q. The next item is in the same column, the very next joke, beginning "Pullman porter" and ending up with "If dem shoes stickin' out from under the bed ain't got no feet in 'em, ah is gonna shave."

Would your answers in regard to that be the same as in regard to the preceding joke? A. Yes, indeed.

Q. And the third and last one on page 93 is the fourth column beginning with "What does f-e-e-t spell?" Would your answer be the same to the same questions with regard to that joke? A. Yes, indeed.

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Q. Now, turning to material in this issue which is specified as similar and related, page 10, a letter from a reader—

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Mr. Bromley: Mr. Hassell, that is not cited as obscene, but merely as an opinion of one of our readers which we published.

Mr. Hassell: That is correct.

*By Mr. Bromley:*

Q. I then go to the next item, page 37, a cartoon in the lower right-hand corner. That is the cartoon in black and white with no sub-title, the sailor with the tattoo on his arm, and the native girl looking at it.

296

In your opinion, is there anything obscene, lewd, lascivious, filthy, or indecent about that cartoon, sir? A. Definitely not.

Q. In your opinion, would the publication of that cartoon have a tendency to corrupt morals, lower standards of right and wrong, or stimulate impure sexual thoughts? A. No, indeed.

Q. And the next item begins on page 56, and it is a piece of short story fiction entitled "Portrait Above the Fireplace." A. Yes, sir.

Q. By Joseph Yablonski. Have you studied and read that story? A. I have.

297

Q. What is your opinion with respect to it? A. This is a very interesting article on a very old theme dealing with the Oedipus complex. It depicts the young man's attachment to his mother and he finally, when the mother dies, becomes attached to a portrait which is hanging over the fireplace, and he visualizes that the direction of his life and many of his activities are by his mother when

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298 they are actually by this portrait, and in the end it is alleged by an intoxicated friend that the portrait is that of a rather well-known mistress, and the young man does not accept that graciously and still goes on thinking a great deal about the portrait.

This is rather psychological and psychology is mentioned in this, an expression for the public of the Oedipus situation. That is showing the extreme attachment the young man has for his mother, and brings out a rather wholesome moral that this young man was guided, when he lost his mother, by the portrait which he, of course, in his psychological mechanisms learned to think of as his mother's face.

299 For instance, he would not undress in front of the portrait. He turned the light out because he thought his mother was looking at him, and, furthermore, he wouldn't appear intoxicated before it and, when he did, he apologized for it.

I think it is a well written article utilizing psychological theory.

Q. Now, remembering the questions which I have asked you with respect to the preceding items, will you tell me whether your answers to those questions would be the same with respect to this article? A. Yes, indeed.

300 Q. Turning to page 104, have you read that? A. "The Sporting Scene"?

Q. Yes. A. Yes, I have.

Q. It goes over to page 105 and ends there. A. I have.

Q. In your opinion, is there anything indecent, lascivious, lewd, obscene, or filthy about that? A. Nothing whatsoever.

Q. Do you think there is anything in that article, or the article as a whole, which would have a tendency to corrupt morals, lower the standards of right and wrong, or incite or stimulate impure sexual thoughts? A. I do not.

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Q. That brings us to the final issue, the issue of November. There is cited in that issue as obscene the Varga color picture and verse which appears on page 46, as to which you have already fully testified.

301

I, therefore, call your attention to the cartoon on page 66. The picture of the soldiers who are surrounded by the native girls with spears, with the sub-title, "It's no use, Sarge. we are outnumbered. Yippee." A. Yes, sir.

Q. Will you tell us whether your answers as to the alleged obscenity of this cartoon are the same as those you have previously given with respect to the other cited and specified material? A. They are.

Q. Will you turn now to page 73, which is a color photograph entitled, "Golden Mould." A. Yes, sir.

302

Q. Looking at that color photograph, will you tell us whether your answers as to its alleged obscenity are the same as you previously have given with respect to the other cited and specified material? A. They are.

Q. Now, please turn to pages No. 94 and 95, which, again, is a double page spread of excerpts from Army camp humor under the title "Goldbricking With Esquire". There is there specified, items 1, 15, 24, 27, 28, 30, 31, 35, and 36, quite a number of jokes.

The first one appears at the bottom of the left-hand column on page 94. A. Yes.

Q. Beginning "The Corporal was going home on a furlough and was lucky enough to have a pullman reservation," and ending up, "I am sorry, one of you girls will have to leave."

303

Now, do you see anything obscene, indecent, lascivious, lewd or filthy about that joke? A. I do not.

Q. That is reproduced from the Camp Livingston, Louisiana, service paper, is it not? A. It so states.



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304 Q. In your opinion, is there anything which would tend to stimulate impure sexual thoughts, or lower standards of right and wrong, or corrupt morals of the average normal person, in that joke? A. No.

Q. The next one appears in the fourth column of page 94, the fifth from the bottom, beginning, "He: 'I see your husband has been promoted to a Master Sergeant,'" and ending up "Don't fool yourself, he doesn't suspect a thing."

Would your answers be the same with respect to that cartoon? A. Yes, indeed.

Q. As you have given with respect to the questions regarding the others? A. Yes, sir.

305 Q. The next item is on page 95, second column from the top, "Home on furlough," and ending up "Where do I start." Would you make the same answers, and would your opinions be the same with respect to that joke? A. Yes.

Q. The next one is at the bottom of that column on page 95, beginning, "The beautiful Army hostess," and ending up, "you're thinking that pan's got a bottom in it." A. Yes, sir.

Q. Would your opinion be the same with respect to that joke? A. Yes.

306 Q. The next one cited is the next succeeding one beginning, "Have a good time at the party, daughter," and ending up, "Make up your mind, mother." Would your answers and opinion be the same as to that? A. Yes, sir.

Q. The next one is the joke, skipping one, which begins, "Buck Private: 'I am afraid we can't have much fun to-night,'" and ending, "a five dollar bill." Would you make the same answers and have the same opinion with respect to that joke? A. Yes, sir.

Q. The next one is the one immediately succeeding that,



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beginning, "Pardon me, Miss, said the sentry," at the bottom of the third column on page 95. Would you make the same answers to the same questions, and are your opinions the same with respect to that joke? A. Yes, sir.

307

Q. And the final one is in the fourth column, beginning, "A beautiful young lady went for a swim," and ending, "the answer came quickly 'Seventy-nine, darn it.'" Do you make the same answers to the same questions, and are your opinions the same with regard to that joke? A. I do, sir.

Q. Now, will you turn to page 52, which is a Sultan cartoon, specified as similar and related material. Have you examined that cartoon? A. Yes.

Q. The sub-title is, "Such a neighbor—always borrowing." A. Yes.

308

Q. Would you make the same answers to the same questions which I have asked you before? A. I would.

Q. Are your opinions the same with respect to that cartoon? A. They are.

Q. Turn over to page 60, which is a photograph in color, by Anton Bruehl, of girls from the Folies Bergere. Will you look at that photograph and tell us whether your answers as to alleged obscenity and so forth are the same with respect to that material as you have previously given with respect to the other cited and specified material? A. It is.

Q. I call your attention to a cartoon on page 67, at the top of the page, entitled "At the U. S. O. in New York they just gave us cigarettes." A. Yes.

309

Q. Is your opinion the same of that cartoon as you have expressed with regard to the others? A. It is.

Q. Next, will you turn to page 77, an article by George Jean Nathan entitled "First Nights and Passing Judgments," which is his regular critical column appearing in

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the magazine as a regular feature, and I direct your attention to paragraphs 1, 10, 15, and 21. A. What page is that, sir?

310

Q. Page 77.

Paragraph numbered 1. This is in the left-hand corner of the column, page 77. Have you read that? A. I have.

Q. Do you see in the middle of that paragraph a phrase "St. Louis sporting house"? A. I do.

Q. Paragraph 10 is the next one cited, the top of the third column, "Young floozie characters wearing short skirts that tightly embrace their hinterparts". A. Yes.

Q. And the next paragraph "Any more plots about some one who mistakes an innocent institution for a bawdy house or vice versa". A. Yes.

311

Q. Those are all things about which Mr. Nathan objects as being presented on the stage? A. Yes.

Q. Paragraph 21, beginning "Den don't gimmie". A. Yes.

Q. That is a quotation from one of the Dead End boys in the play "Dead End"? A. Yes.

Q. That is something about which he objects? A. Yes.

Q. Is your opinion with respect to those paragraphs the same as you have expressed with regard to the preceding items? A. Very definitely.

Q. Finally, I call your attention to page 83, a cartoon at the top of the right-hand column sub-titled "My date's at the awkward age, all hands and no dough". A. Yes.

312

Q. You have the same opinion with respect to that cartoon? A. I do.

Q. One last reference, page 89, a color photograph. Would you make the same answers to the same questions as I have heretofore asked you? A. I would.

Q. Are your opinions the same with regard to it? A. They are.

*Kenneth J. Tillotson—for Respondent—Cross.*

Q. Doctor, let me ask you this: Having examined all the cited and specified material in the January issue, in your opinion, is the cumulative effect of the cited and the specified material in that issue, such as to render all or any part of it obscene, lascivious, lewd, filthy or indecent? A. No.

313

Q. Would your answer be the same as to each of the other issues? A. It would, and to the combined issues.

Mr. Bromley: That is all.

Mr. Hassell: If the Board does not object, I should like to remain seated for the examination because it is going to take quite a little while.

Chairman Myers: I don't see why you shouldn't. For that matter, Mr. Bromley, if you wish to remain seated it is satisfactory to the Board.

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Mr. Bromley: Thank you, sir.

*Cross Examination by Mr. Hassell:*

Q. Doctor, what is your definition of the word "obscene"?

A. "Obscene" is that which is lewd, lustful and filthy.

Q. Does that definition apply to all ages and all sexes?

A. It applies to obscenity the world over in all ages and in all sexes.

Q. What is your definition for the word "lewd"? A. "Lewd" is that which is indecent and, obscene, I think is used in the definition of lewd.

315

Q. Would you accept as a competent and proper definition of the word "obscene" "offensive to the senses, repulsive, disgusting, foul"? A. That is, second—yes, I would accept foul; foul and filthy are the same. Disgusting to the senses would be and is mentioned in Webster. I think, as the second or third line. There are several other lines. I wouldn't use it interchangeably.

*Kenneth J. Tillotson—for Respondent—Cross.*

Q. Would you accept as a definition of obscene "offensive to the senses"? A. No, indeed.

316

Q. If the Century dictionary gave that as one of the definitions of obscene, you would disagree with it? A. No. Webster gives that as a definition also. I would accept it as part of obscenity, but not as a substitute.

Q. I was not asking for synonyms or substitutes but, would you accept that as a definition? A. As a part of the definition, yes.

Q. As a part of the definition? A. Yes.

Q. Would you accept as a part of the definition "offensive to modesty and decency"? A. Yes.

Q. "Impure"? A. Yes.

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Q. "Unchaste"? A. Yes.

Q. "As obscene actions or language; obscene pictures"? A. Yes.

Q. Would you accept as a part of the definition of the word "obscene", "offensive to chastity"? A. Yes.

Q. "Delicacy"? A. Yes.

Q. Or "decency"? A. Yes.

Q. Would you also accept as a part of the definition of obscene "expressing or presenting to the mind or view something that decency, delicacy, and purity forbid to be exposed"? A. Very definitely.

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Q. Would you also accept as a part of the definition of obscene "offensive to senses, obscene publications, and indecent publication which, whether true or false, tends to deprave and corrupt"? A. Yes.

Q. Would you accept as a part of the definition "offensive to morals"? A. Yes.

Q. Those latter definitions are from Funk & Wagnalls' New Standard Dictionary? A. Yes, sir.

Q. Now, coming to the term "lewd"; would you say that

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word is synonymous with the word "obscene"? A. Practically, yes.

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Q. You said "practically". Let's get down to cases. A. I will say "Yes," if it will save time.

Q. I am not interested in saving time. A. Neither am I.

Q. I want to get this straight on the record. The word "lewd" would you say is something characterized by lust or lasciviousness? A. Yes, indecent and vulgar.

Q. Would you accept Funk & Wagnall's New Standard Dictionary definition "Or given to licentiousness, libidinous, unchaste"? A. What was the second word?

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Q. "Libidinous". A. "Libidinous" is a technical word which in itself I would not consider in any way synonymous with licentiousness. The word "libidinous" is an adjective referring to Libido which does not connote licentiousness or lasciviousness. It is a part of the general public psychology and is talked of freely now.

I should not accept "libidinous" as a qualifying adjective—

Q. What is "libido"? A. "Libido" is the technical term representing the whole sex super-ego, the sex urge in the psychology of man. Libido does not mean just sex in the sense of intimate relationship between men and women. It represents the beauty in nature, it represents the beauty in music, it represents the beauty in art.

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If we think of three fundamental instincts of man as self-perpetration, self-preservation and self-perfection, the libido threads through all, but has particular reference to the sex impulse, not in a restricted way but in a broad way.

I could not, for that reason, use the word "libidinous" in any way as a part of the definition of lewdness. It is part of our modern educational trend.

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322 Q. If Funk & Wagnall's New Standard Dictionary gives "libidinous" as one of the definitions of "lewd", you would not agree? A. I would not accept it.

Q. And if that word had been accepted by the courts, including the Supreme Court of the United States— A. When?

Q. In connection with obscenity and lewdness— A. When?

Q. I am not on the witness stand. A. I beg your pardon.

Q. I say if it had been so accepted, you would not agree?

A. I would not.

Q. You say "lewdness" and the common every-day acceptance of the term does not imply "libidinous"? A. No, not to my mind.

323 Q. Now, coming to the word "lascivious", what would be your definition of that? A. "Lascivious" would refer to the sex on a lowered plane, the vulgarity of sex rather than the beauty of sex, to the carnal knowledge or carnal instinct of man.

Q. And how would you distinguish that word from "lewd" and "obscene"? A. I think they go very intimately together and usually in the definition of one, according to Webster, you will find the others.

Q. Would you accept the definition of the Century Dictionary of lasciviousness as being "wanton, lewd, lustful, lascivious men, lascivious desires"? A. Quite right.

324 Q. "Tending to excite voluptuous emotions"? A. Right.

Q. And you would accept Funk & Wagnall's New Standard Dictionary's definition of "lascivious" as "having or denoting wanton desires, lustful, lewd, as a lascivious person, lascivious feelings or words; tending to produce sensual desires; as lascivious pictures or books"? A. Yes.

Q. Now, will you give us the definition of the word "indecent"? A. I think "indecent" is something which tends to violate the mores and the customs of good society of the times.



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in which we live. "Indecent" violates good taste, good morals and the customs and the psychological tendencies of the habits and social etiquette of the times. 325

Q. Would you accept the definition of the Century Dictionary as "indecent, unbecoming, unseemly, violating propriety in language, behavior, etc."? A. I think that is the same thing.

Q. "Grossly vulgar, offensive to modesty"? A. That is right.

Q. "Offensive to common propriety or adjudged to be subversive of morality, offending against modesty or delicacy, unfit to be seen or heard, immodest, gross, obscene". A. I would. 326

Q. "Contrary to what is fit and proper, unbecoming, inelegant in form, uncomely". A. It spreads that pretty thin there, but I would accept it.

Q. Now, what would be your definition of "filthy", Doctor? A. Well, I don't think "filthy" needs to be defined. It refers to words that are not spoken in society. Filthy would be rankly indecent, lewd and obscene, language, pictures, poetry, articles, or anything.

Q. Do you associate the word "filthy" necessarily with the words "obscene, lewd and lascivious"? A. I do.

Q. Meaning substantially the same thing? A. Yes—no, I think it is more vulgar, to introduce another word. I think it is more vulgar than "obscene" although it is practically the same thing. 327

Q. Now, would you agree with the following Century Dictionary definition of the word "filthy": "Containing or involved in filth, foul, dirty, noisome, nasty"? A. Yes, sir.

Q. "Morally foul, defiled by sinful practices, polluted". A. If you will indicate when you want me to answer, sir, I will be glad to do it.

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328 Q. Do you agree with that? A. I do.

Q. "Low, scurvy, contemptible, mean." A. You mean "filthy" may be "mean"?

Q. Yes. A. I would like to have an explanation of that. I never knew those words were synonymous.

Q. The Century Dictionary gives that as the third choice of definition. A. It spreads that out thin there. Too mean, in the old English sense, meant too uncomely.

329 Q. Would you agree with Funk & Wagnall's New Standard Dictionary's definition of "filthy", as "of the nature of or containing filth, dirty, nasty; hence vitiated by contact with impurity, morally unclean or depraved, foul, obscene, as a filthy street, filthy tastes". A. Yes, sir.

Q. Now, you had in mind all of these definitions that you have agreed to, in answering counsel's questions on direct with respect to all of the matter contained in these eleven issues of Esquire? A. I had the essentials of those definitions in mind when I answered every question, and the phrase which I think is quoted in your law, "pander to the prurient".

Q. What is the normal mind you speak of, Doctor? Will you define that? A. No, sir.

330 Q. When you refer to the effect of material referred to here as affecting the normal mind. A. I beg your pardon. I didn't understand your question.

Q. Just what do you mean by "normal mind"? What do you mean by the normal mind? A. I mean by the normal mind the average mind of the average man or woman and boy or girl in our society who has average intelligence and who has the average emotional makeup and who is subjected to the impact of everyday life in a realistic manner, and who makes a normal adjustment, either in school, college, or employment, or in vocation and occupation.

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The mind of the mass individual and the mass man as we speak of it, the psychologic biological. He is that individual who shows no particular personality deviations or no particular emotional disorders such as neurosis or neuro-psychiatric conditions and has no particular psychopathic tendencies. He has average normal emotions, intelligence, and lives in the milieu of our cultural environment and normal average life.

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Now the mind of that individual, if there is any one pattern, and I think there is not, I think in psychiatry and in science and all our work today we establish what we call the average individual, the average man. We have to investigate them at the induction center, and those that do not measure up to that standard we consider deviate; and the deviation is due to some function or disturbance of function.

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I think I visualize very clearly what you mean by the normal mind, and I think it has to be traced in a situation like that from the very early childhood to the very senescence of life.

Q. As applied to the general reading public? A. Yes.

Q. The magazine-reading public? A. Yes.

Q. Would you say it is the ordinary man who is allowed to walk the streets and buy a magazine off the newsstand?

A. Yes, sir.

Q. Man, woman, or child? A. Yes, sir.

333

Q. What do you call a person who is under this or below this normal or average? A. Well, there are various types. Are you speaking intellectually from the standpoint of his psychometric standard, or are you speaking from the standpoint of his emotional standard? They do not necessarily go together.

Q. I feel we are talking about emotions. I judge that

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334 is what you are talking about. A. Well, in answering, I would be glad to follow that line if you would like to. The individual who is emotionally an upset individual, from that standpoint, or the emotionally ill individual, may be suffering from a neurosis. There are many types of them, or he may be suffering from a psychosis and there are many types of those, and your question is rather broad. It is almost like saying what physical conditions or disabilities are walking the street? It is a little difficult to orient your question.

Q. Is there a line of demarcation between the average normal individual? I am talking about emotionally. A. Yes.

335 Q. Is it very clearly drawn between the normal individual you have had reference to? A. To the psychiatrist, yes; to the average individual, not necessarily.

Q. So it is a fact, is it not, Doctor, that there are a great many people who may patronize newsstands who are, in fact, subnormal? A. That is right.

Q. Are you able to divide the population of the United States? A. I have never undertaken that, no, not on that. You mean numerically?

Q. Yes. A. Not numerically. I think otherwise we can.

336 Q. Have you, in your studies of Esquire, classified as normal, sub-normal, or both, these several hundred thousand readers of Esquire? A. Yes.

Q. You have? A. No, I haven't.

Q. So you are not able to tell this Board whether, as a matter of fact, the readers of this magazine, the seven hundred thousand, are sub-normal, normal, or abnormal? A. I am not.

Q. In what category did you place yourself, Doctor? A. In regard to normalcy?

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Q. Normalcy. A. Well, I think I am an average normal individual morally and physically, spiritually and intellectually. I think we might go into those four fields because I really think, and I really know, and I don't like to seem egotistical, that I am above the average normal intellectually. That is as you take the cross section of the population. I would not like to go any farther than that.

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Q. You speak of spiritually. What is the Seventh Commandment, Doctor, of the Ten Commandments? A. Well—

Q. We have that in this case. A. Which one?

Q. The Seventh Commandment. A. What is it? Thou shalt not commit adultery.

Q. We will come to that later. A. All right.

Q. But you have guessed it is, "Thou"—

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Mr. Bromley: How do you know he guessed it?

Mr. Hassell: Well, just from the way he hesitated in answering the question.

*By Mr. Hassell:*

Q. You take that, is that right? You say that is the one? A. (No answer.)

Q. Now you have lumped into this average individual, as I understand it, both normal and abnormal? A. Yes.

Q. Pre-adolescent, adolescent, and post-adolescent, is that correct? A. Yes.

339

Q. You believe that pictures and reading matter have the same effect on this average individual no matter what his sex, regardless of his age? A. Oh, no, certainly not.

Q. Did you in your answers to counsel's questions on direct have a mental reservation as to the age of the individual, of this average or normal individual, or his or her sex?

A. None whatsoever.



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Q. You did not? A. No. If I understand your question, your questions are extremely ambiguous.

340. Q. Doctor, you would say that age is a factor upon the sexual desire, would you not? A. Yes, sir.

Q. A young man of 18 has a great deal more sexual urge than a man, say, of 65 or 85? A. Not always, but as a general proposition I think that is true. There is a great variation in the sex urge and drives of individuals in all ages.

Q. Would you say that the young man of 18 may be stimulated, has his sexual desire stimulated, by material which a man, say, of 65 would not get any kick out of at all sexually? A. Yes.

341. Q. As a matter of fact, would there be a vast difference between a man of 18 or 20 and a man of 45 to 50? There would, wouldn't there? A. There might be in certain instances.

Q. And as a matter of fact, Doctor, not to quibble, the sexual processes diminish, do they not? A. Yes, sir.

Q. In your answers to counsel's questions on direct, what age man did you have in mind? A. All men.

Q. All men? A. From pre-adolescent to senility.

Q. How old are you, Doctor? A. I am 46.

Q. You personally know the difference in the matter of sexual desires now and when you were, say 20? A. Yes.

342. Q. Are you stimulated now in the same way by pictures or material in print as you were when you were 20? A. I think I probably am, yes.

Q. You would say there is no difference there? A. I think—

Q. But there is a difference? A. I think I am much more sex conscious now than I was when I was 20.

Q. In your business you have had occasion to inquire



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into the sex habits of a great many individuals? A. Yes, sir. 343

Q. That made you more sex conscious or more callous as to sex matters? A. I think it has made me more intelligent in the field of sex. I doubt that it has made me more callous. I think it has made me have a more wholesome and more careful and more scientific and a better educational outlook on sex. It has given me an opportunity to see why we have missed the boat in our education in matters of sex.

Q. But you would still say that you are affected? I mean yourself, personally, you are affected in your sexual desires the same now as you were before when you were 20? 344

A. Well, I haven't thought very much about that, but, off-hand, I would say that you are speaking of my instinctual urges. I would say that they are greater now than they were at 20, if that is what you mean, the biological urge.

Q. I have reference to that as applied to the sex images you get from reading salacious material and seeing salacious pictures. A. I never get much kick or sex stimulation from salacious pictures or salacious material when I see it. That is something that I try to eliminate from those whom I care for and from my family and from the public. I am as eager to do that as you are, sir. 345

Q. You enjoy that same ability now as you did when you were 18 or 20? A. I was never fond of the dirty pictures, lewd or salacious pictures or literature.

Q. In other words, you never had a very great liking for the double entendre and off-color jokes and cartoons and pictures? A. No, sir?

Q. Yet you say you are the average individual so far as that goes? A. Well, I have a great many in my group, in my class, who have the same feeling, and I see many

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patients who have a passion for that sort of thing, of course, who take the opposite view. I would say that society is divided about half and half that way, irrespective of their sexual or psychological or emotional makeup.

Q. You base that statement on what segment of society. Doctor? A. The whole cross section.

Q. You mean you have had personal contact with the whole population? A. No. I made that estimate on the basis of a portion of the population that I have seen, running from all classes of priests, judges, physicians and professional people, and going down to the ditchdigger. I see all classes under all conditions.

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Q. You are now in active practice, Doctor? A. I am.

Q. Where? A. I am Psychiatrist-in-Chief at McLean Hospital, and I am a consultant Psychiatrist at Cambridge Hospital and a consultant Psychiatrist at Harvard University, and I have a private practice in my own home and office at 179 Clifton Street. The latter office is because a great many people like to see a psychiatrist and don't like to have it generally known that they are seeing a psychiatrist. And I also serve at the First Corps Area Induction Center one day a week, and I am Chief Psychiatrist for Draft Board No. 11 in Greater Boston.

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Q. Doctor, do you come in contact, in your practice, with city dwellers and urbanites? A. I see them all the way from the hills and farms in Vermont and California and Mexico. All over. Our hospital caters to people from all over this country and from out of the country. I have several patients from Mexico and Canada.

Q. Those patients are abnormal, Doctor, sub-normal? A. I don't like the word abnormal or sub-normal. Of course they are somewhat abnormal. I would have to say that any person who has an emotional situation is abnormal

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temporarily or has a temporary abnormality. The emotional illnesses are now regarded as curable in the same way and category as medical diseases. They are curable. For instance, my field is in experimentation and concentration on the treatment of such disorders and I am naturally interested in the prevention of them.

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Q. You come in contact with a great many normal people who live in small towns and rural communities through the south and west and midwest and far west? A. I don't come in contact with many people from the west or far west or midwest. I see more people from New England, which is my area of operation. I see more from there.

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Q. Why do normal people come to see you, Doctor? A. To consult me about members of their family who are ill, and many people come to me about problems. The psychiatrist is consulted in many ways today, about how to live, what to do, I have been consulted by hundreds of mothers about their adolescent and debutante daughters about affairs that they have had with young men, whether they should get married. I have seen hundreds and thousands of college men, and I also see them at the Pre-Induction Center. Of course, that is rather hurriedly, but it is indicative of the type of material we have in this country.

Q. When a mother comes to consult you about her daughter, or a father about a member of his family, do you psychoanalyze him? A. No. Psychoanalysis is a very specialized problem. I have been psychoanalyzed myself when I studied abroad. Psychoanalysis is only one very small part of psychiatry, and psychoanalysis is only carried out with a great deal of time and difficulty. Psychoanalysis is an investigation of the unconscious and the individual has to spend an hour a day, five days a week, over a period of months and sometimes years, to be psychoanalyzed. The

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352 average psychiatrist doesn't do that. It is impractical and unnecessary. It is sometimes referred to or spoken of as analogous to major surgery of the brain, that is, psychoanalysis, but the body of the psychiatric work is the distributive work, the practical need, getting a complete history of the individual and finding out things. That not only includes the patient's history, but includes an exhaustive family history, and finding out the vocational history and finding out what the individual's background and constitutionality is, and what the individual's problems are, and thereby you get some ground to stand on as to what you should do to correct. You go into the environmental field and into the biological field. In that particular field we are having a great deal of success.

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Q. You go through that process in each examination of appraising normal individuals? A. Yes. Many normal individuals come in for psychiatric review. Now there are such tests as aptitude tests whereby the individual going to college takes a test. Practically all college men have these aptitude tests, to find out what vocation they should pursue, or what profession they should take up. They are known as vocational and aptitude tests.

Q. You go into the complete history of each individual in each one of those cases? A. Indeed we do.

354 Q. And those individuals or patients tell you all their sex impulses and feelings and so forth? A. Well, I couldn't say whether they tell all or not, but the sexual field is usually investigated.

Q. Do you inquire of those patients, those normal patients, that you have had, as to what effect these issues of Esquire has on them? Have you done that? A. Not particularly Esquire, but that is usually a question that is asked collectively, what effect current literature or anything of that kind has or what affects them sexually.

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Q. You have been trying out these eleven issues on your normal patients, have you, Doctor? A. Yes, I have.

Q. You have? A. Yes. As a matter of fact, in preparation for this, I have asked a great many normal people. I have asked different age groups, male and female, just what their reaction is to this. 355

Q. What their reaction is to Esquire? A. Yes, to this particular material we are discussing here.

Q. You mean in each one of those instances those patients sat down and read everything in these eleven issues? A. Oh, not in all of them, but a representative amount of material such as has been cited and specified here, because I wanted to see and orient myself a little bit to see if I was on the wrong track, if I missed something.

Q. You were furnished how long ago, how long back, with a copy of the specifications and charges here? A. Now the specifications I had only a few days completely, as we now have them. The material was discussed with me, I think it was, two weeks ago, if I recall, approximately. 356

Q. So you have been working on this case, with a view to testifying in it, since two or three weeks ago? A. Yes, sir.

Q. How much of that time? A. You mean in preparation for the case?

Q. Yes, sir. A. You want it in hours or days?

Q. Well, what is your regular day, eight hours? A. I wish it were. It is nearer fourteen.

Q. Fourteen? A. Yes. 357

Q. Take the 14-hour day. A. Let me make it clear that I couldn't sit down in my busy life and work 14 or 7 hours on this material. I had conferences with the attorney as to what this material was and what the action was about, and I read all of these Esquires through, and I don't know how many hours that would take, but I did that over a period



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of a week or ten days. Some of these articles I probably read 20 times. Now you guess as to how much time that would take.

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Q. You got these normal patients whom you consulted to read these eleven issues and to put some time in on it? A. Would you want me to tell this Court what I have done?

Q. Absolutely. A. You do?

Q. Yes. A. All right. This has created quite a little interest in our section and I have groups of my wife's friends—not saying what this action was—I have asked them to pass judgment on those pictures and this material which is marked as obscene, and the most that I got from any of them is occasionally a joke is a little risqué, and likewise my colleagues in the field the same way.

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Then I have taken the articles and have had my fellow psychiatrists, men on my staff, read them through, to see if I had missed anything in those articles, and in the whole cross section there has not been a single individual who applied the term obscenity, lewd, filthy or obscene to any of these articles, jokes, or publications, or pictures.

Q. Now, these people you are talking about were not your normal patients? They were not patients at all, were they?

A. No. I haven't tried to put this experiment on patients. These are acquaintances.

Q. How many of these friends and acquaintances, and so forth, that you refer to, how many individuals did you do that to? A. Why, I should think approximately 40.

360

Q. Forty? A. Yes.

Q. You furnished each one of those a full set? A. Oh, no, they had to use my set. I had to loan these about.

Q. And that was all done over a period of ten days or two weeks? A. That is right. You have at the hospital a group of ten at a time.



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Q. Of these 40, how many were male and how many female? A. About fifty-fifty, roughly.

Q. Fifty-fifty? A. Yes, more women than men, I think.

Q. How many were pre-adolescent, adolescent, and post-adolescent? A. Well, of the pre-adolescent I can say only two, my two youngest children. One is adolescent, and all the rest are post-adolescent.

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Q. How much post? A. All the way from stenographers, I suppose, roughly, around the age of 20 or 21, up to two or three men that are 50 or 55.

Q. How many in the 20 class of stenographers? A. I suppose about 10.

Q. How many in the 50 or 55 class? More of those? A. No, I think only two in that class. The men on the staff are between 30 and 35.

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Q. Did you tell those people that you had been employed to testify for Esquire? A. I did not. Some of those people, my family, knew it.

Q. They gladly assisted you in this? A. They looked over the material and gave me their comments.

Q. Well, a rather laborious task, wasn't it? A. Oh, no, I had made it clear that I did not cite every article. Then I took representative articles, perhaps only showed an individual two or three copies, but I tried to pick them fairly.

Q. What do you mean by that, Doctor? A. Pick them fairly?

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Q. Yes. A. Well, one in which there was a lot of specifications marked or a lot of cited material, not one like June where there is only two there.

Q. You mean you didn't ask the young lady stenographers to pass on the Varga girl? A. Some of them, the issue with the 12 in, yes. I was particularly eager on that because I have always admired the Varga girls very much and I heard

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a great many favorable comments on them, and I wanted to be sure that I was on the right track.

364 Q. By the way, Doctor, did you see the moving picture "DuBarry Was A Lady"? A. No, I didn't.

Q. You wouldn't be able to say why those Varga girls were dressed up? A. I didn't see it.

Q. Or had a little more clothing on? A. I didn't see it.

Q. Doctor, would you agree with the statement, getting back for a moment to definitions, that obscenity is a function of many variables? A. Yes. A function of many variables. Yes. I mean I think that means that there are very many degrees of obscenity, isn't that what it is?

365 Q. You don't think this refers to the sex age, upbringing, environment, and so forth, of the individual? A. As a part of it, yes.

Q. Now, you read: I believe you stated, everything in every one of these eleven issues during the ten days or two weeks, I believe you said? A. That is right.

Q. That is, advertising and everything? A. All the specified material. I did not read what was not specified or cited.

Q. You did not read any of the other material at all? A. Well, I wouldn't say. I may have read one or two articles, I don't recall.

Q. Well, now, let us get this straight. Did you or did you not read each one of these publications in its entirety? A. No, I did not.

366 Q. You did not? A. I did not, no.

Q. So when you answered counsel's questions as to whether there was anything in any of these issues that was obscene, lewd, lascivious, or filthy, you meant only those things that were referred to here? A. Right, right.

Q. Doctor, coming to the January issue of Esquire, I mean under "Editorial: Pep talk to the tune of 'Easy does

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it," page 6, the boxed-in article headed 'Shor Nuff' "? A. Yes, I have it.

Q. The first paragraph of that says:

"Esquire, the four-bit magazine which is always busy as a little beaver sandwiching good advice between its spicy cartoons, comes up this month with a male Dorothy Dix who tells you how to pick a war bride."

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Do you agree with the characterization in that paragraph with respect to the cartoons in these eleven issues of Esquire, as being spicy? A. I think that they are, that adjective might be applied.

Q. And Esquire is supposed to be a man's magazine? A. Yes.

Q. What would you mean by "spicy" to a man? A. I think it might be a joke that was a little suggestive and possibly a little off-color or perhaps having a double meaning.

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Q. By "double meaning" you mean one pointing to sex or sex activity? A. It might be sex or something else, but it might be a double meaning and I think the men get a kick out of being able to see that double meaning.

Q. The other meaning might be indelicate? A. It might be indelicate to some, definitely.

Q. Continuing with the second paragraph:

"This advice-to-the-lovelorn character is named Woodhead. This will give you an idea of what to expect. If that name isn't a phony, it's a damn fortunate coincidence."

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"Assuming you want to get married—and some guys will do anything to get off the post seven nights a week—Esquire tells you how to pick the gal. You're supposed to use a test sheet, drawn up by this guy Woodhead, which scores a dame on a possible 500 points. If she rings up more than 400, you're advised to take a chance. If she tops 475, Esqy sug-

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gests that you rush her to the altar with a heavily armed guard, lest someone steal her or she change her mind. If she beats 497, you'd better forget the whole deal; she's either Myrna Loy, already married, or you're dreaming.

"The test is divided into nine sections. Companionship comes first, with 105 points, followed by intelligence 90 units, and disposition, with 80. Comes it then breeding (no, not that)"—what does that mean—"comes it then breeding (no, not that)"? A. Whether she is well bred or not, I suppose. In Boston we might say whether she is in the Social Register.

Q. You wouldn't say that had any connotation of reproduction of the species? A. To a person with a filthy mind it could.

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Q. Why is it in parentheses? A. Because they don't want to consider whether she is a blue-blood or not.

Q. Or don't want to consider whether she would be entirely fertile? A. I honestly didn't get that out of that.

Q. You didn't get it? A. No.

Q. Continuing: "—which scores 50; beauty, 45; health, 40; juking (this is something Woodhead thought up which puts sex, dancing, manners, drinking and risque behavior in one package)"—do you think that is a good definition of this word as used in this paragraph? A. Juking?

Q. Yes. A. That is a new word to me. I have seen it and the young folks are using it. I suppose that is a good definition of it.

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Q. In the opposite column where he has numbered these items he has "Item 7: Juking—a. That's right. Just what you're thinking about." Then, 400 points or units. A. That refers to the definition, I suppose, that he has just given on the other side.

Q. You think that has nothing to do with the sex function? A. Only as mentioned in the definition, sex appeal, and so on.

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Chairman Myers: Doesn't the word "joking" come from the words "juke box"? 373

The Witness: The young people in our vicinity say they are going joking. There aren't many places to go now. They go play and dance where they have juke boxes.

*By Mr. Hassell:*

Q. Let's refer to the complete paragraph nearest the top of the second column:

"The pay-off on what kind of a guy this Woodhead is comes quick. He figures a gal's dancing ability is worth 20 points. Sex he gives 10." 374

And then, "So he would rather dance—" —What do you think he means? A. I think he means what he says. He would rather dance.

Q. In other words, this fellow Woodhead is Charley McCarthy, in fact? A. I think he might be considered a block-head.

Q. He's a dead number? A. I suppose so.

Q. Certainly, insofar as sex is concerned? A. Insofar as that article is concerned.

Q. Now, let's see—the next item is page 45. There is a verse "Benedicts, Awake" by Franklyn Reynolds. 375

"Men sleeping beside your wives, awake!

Awake, to gaze longingly, lastingly,

Upon soft skinned thigh and softer breast revealed by  
careless gown.

For has not fate decreed deprivation?

Has not Hitler written and Tojo demanded

Your lot shall be the stinking bodies of men, the living  
and the dead?"

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376

And so forth to the last paragraph reading:

"Men sleeping beside your wives, awake!

Awake, and seek the sweet caress of lip and arm.

Time awaits, not upon your pleasure, because destiny and doom are one."

377

The first part of this last paragraph and the first part of the first paragraph—what sort of picture do those words bring to your mind? A. That pictures something that you hear about every day, a man who is being drafted in the Army and is spending his last nights at home with his wife, and who is torn with the emotions of leaving a loved one and it brings to me the beauty portrayed in that picture of womanhood, and I think it is a glorious article and a noble thought for these times.

There is certainly nothing obscene or filthy in that article. That is the unanimous opinion of everyone I have talked with. Anyone who considers that in any way obscene or indecent or filthy must have a filthy mind.

Q. In other words, you think it is entirely proper and not indelicate at all, to picture by language such as this, "men sleeping beside your wives"— A. Certainly not.

378

Q. "Awake, to gaze longingly, lastingly upon soft skinned thigh and softer breast revealed by careless gown". A. Certainly not.

Mr. Bromley: I don't know whether you mean the answer "Certainly not".

The Witness: Will you read the question, please?

(Question and answer read.)

The Witness: I certainly do think it is proper.



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*By Mr. Hassell:*

379

Q. You think there is nothing indelicate or indecent in that? A. I certainly do not.

Q. Now, coming to the article by Gilbert Seldes, page 83—is this one of the articles you read twenty times? A. I didn't say I read it twenty times. I saw the show and was familiar with it and it is such good reporting that I only had to read it two or three times.

Q. I believe you testified there is nothing indecent in this article. A. That is right.

Q. Up at the beginning of the article:

380

"The scene is the old familiar burlesque routine of the court room; Clark is presiding, as an owl should; and, merely as an incident, Gypsy Rose Lee is the defendant against whose navel Clark finally blows a paper tickler."

Now, "against whose navel"—do you think that is perfectly decent language in a man's magazine designed to please these average or normal men you refer to? A. Yes, I do.

Q. And we go to the third paragraph. Unfortunately, he makes practically the whole sentence a paragraph, so we have to start way back:

"Of course, wherever Bobby Clark goes, the mad quality of comedy follows; he is in himself a comic masterpiece; he is seductive and outrageous at the same time. Years ago he did a seduction step around Mary Boland, singing "How About a Boy Who Could Play the Piccolo (For a Girl Like You)" with such graceful and insinuating and suggestive steps as no black slave in Scheherazade could surpass; for the past few years he has leaped into the air, clicked his heels sideways (how?) and sung of himself as "Robert the Roue from Reading, Pa.," weaving and winding his frame

381

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382. around tall show girls, peering through his non-existent glasses into the bosoms he isn't tall enough to see unless he jumps."

You think there is nothing indelicate and indecent in that language? A. I don't think it is indelicate and it becomes less so if you have seen the play.

Q. I assume that some of the 700,000 readers, or a good many of them, haven't seen it. A. I still say it is not indelicate or indecent, definitely not.

Q. Or lewd or obscene or lascivious? A. No, sir.

Q. And the next paragraph;

383. "This time Bobby Clark is in a sexy show which has even a few dirty spots, I suppose. And novelty is the last thing you look for there. Burlesque patrons are single-minded, if that's the right word."—Do you know what he has reference to there? A. Yes.

Q. Single-minded, how? A. They are thinking of one thing, probably.

Q. What's that? A. Sex.

384. Q. "And the grinds and teases follow a pattern which can't be altered much; because like children listening to an oft told tale, the fans of burlesque do not want novelty; they think that something has gone wrong if the tale is different. So you have girls stripping to a riotous dance or you have girls stripping not to a dance. And since this is uptown stuff, you have the odd spectacle of Gypsy Rose Lee stripping awkwardly and self-consciously, which may be a novelty, but isn't very good fun. Certain little gestures as she fluffs the ruffles on her jacket are enticing; but the major part of her strip she does from under the cover of a bouffant dress, working strings and letting petticoats drop—and down to the planted scream in the audience and the laugh Lee manages every night after the scream—it is just this side of the simple, honest denudation she was capable of five years ago."

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Do you think there is anything indecent in the language I have read? A. I don't see anything indecent and I think he is panning it. This article has a good moral influence.

385

Q. And you would say to one who had seen the show, such as you have, you would get that understanding? A. I think you would without seeing the show, but it becomes even more clear when you have seen the show.

Q. I understand Georgia Sothorn participates in this show. She is not mentioned in this article, is she? A. I think not.

Q. Do you recall the dance Georgia Sothorn does in the show? A. I don't recall that I saw that—let me think—let me see—is that the Bunny dance?

386

Q. I couldn't tell you. I think she was or is in the show. A. I think she did the bunny dance.

Q. It is a dance that has been referred to in some of these magazines as "The Bumps". It is done largely with a movement back and forth of the middle or the hips or pelvic section. A. I don't recall it. It didn't impress me if I saw it.

Q. Continuing quote "Between Bobby Clark who appears in a long funny scene wearing flannel drawers and Miss Lee whose specialty is being dressed in three well-placed, presumably provocative flowers, you have the essence of burlesque. In this particular show there is also a young slender dancer named Leticia, who does a wonderful trick ballet dance—a trick because it is actually erotic, whereas so many of the hip grinds are not."

387

What do you have to say as to that? Would you say that is a true and correct description of this part of the show? A. Probably it is. I don't recall that particularly.

Q. So, if that is the correct description, then this article

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388 would be an advertisement of an erotic show. A. I think this article is not an advertisement. I think it is a condemnation of it.

Q. Continuing: "There is also a character from the night clubs who makes her breasts jiggle, and this is considered funny, but I didn't think so even at the night clubs where her frankness was greater, her skill no more engaging. A stripper who does an orgiastic dance verges on the erotic."

389 Do you say there is nothing indecent in that part of this article? A. If this was taken as a glorification of the situation it might border on indecency, but since it is such a definite expose and condemnation and is showing burlesque up—if you read on from where you stopped it explains the matter in a way that I think is justified, and any borderline indecency is more than justified by the moral in the article. This is a good characteristic article.

Q. Would you say, Doctor, that the practice is often followed of advertising by condemnation. For instance, perhaps you have seen advertisements of various sanitary materials for women, and they are warned not to use them at certain times. You are familiar with that type of material?

A. You mean contraceptive material?

Q. Yes. A. Yes, I know that.

390 Q. Would you say that is a well-known trick of advertising? A. Yes, and we had that in prohibition days when you were sent a gallon of wine and you were warned not to leave the stopper out because if you did it would become alcoholic. Is that what you mean?

Q. Yes. A. Yes, I am familiar with that.

Q. Over in the next column in this article he gets to Lamberti.

"Lamberti plays what he calls the 'ixilphone' with many a flourish; and as he goes into his big number (Wishing)

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a tall cutey saunters in behind him and begins to strip; she sheds a garment just as Lamberti finishes a chorus; applause recalls her and starts him again."

391

That, so far as you are concerned, is perfectly decent and satisfactory language describing this play? A. Yes, it is.

Q. Coming to the next paragraph on that page—

Mr. Bromley: I wish you would finish the sentence and not stop in the middle of the sentence.

Mr. Hassell: This sentence goes on for eight or ten more lines. He separated his thoughts by semicolons.

392

"Applause recalls her and starts him again; his bland and leering ignorance of why the piece is so popular (he played 103 choruses of it once at a Legion Convention, he says), is masterly; he smacks his lips and flutters his tongue and waves his toupe and rolls his eyes—purely as a virtuosa of the xylophone."

I will finish the paragraph:

"And even the old, sad, faithful lechers of the audience prefer him, I think, to the naked strip, so to speak, of some of the other acts."

And continuing:

"The business of getting comedy out of the sexual appetites isn't an easy one. Infinite variety, sex may have; but its singleness of purpose dulls the brilliance of its techniques."

393

Doctor, would you say that those matters I have just read have any indecent sex implications? A. No, I think quite the opposite.

Q. Now, going to the last two lines on page 83:

"The coming together of the male and female principles



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394 in the vegetable world (if they do come together there) would not be interesting, unless cow-slips flirted and violets were really bashful and false-ragwort were a seducer.—It's the trace of mentality that gives us sex as a subject for fun; the trace (not more) of morality that adds spice. So an entertainment which by-passes all the refinements and whoops it up about cohabitation, with a sneer or a laugh or a cackle or even a shout, has a limited field. Burlesque and all other exhibitions seem to run into a groove; it's the best groove and you mustn't call it a rut. The girls in two-bit burlesque are seldom beautiful, but by being where they are they touch off lubricity."

395 What is the meaning of that word? A. I don't know.

Q. That word has a definite meaning in sex, doesn't it?

A. I don't know the word.

Q. I think the dictionary will supply the definition. Certainly, the medical dictionary will. A. It is not a medical term, I can tell you that.

396 Q. "They combine some exceptional qualities because they are outspoken and pretend innocence and corruption at the same time. They make familiar gestures whose meaning cannot be in doubt; but these gestures become a special formalized movement which one would be surprised to encounter on the street or in private. The whole event is a mass seduction with delayed satisfaction, if any."

What does that mean? What does he mean by that? "Mass seduction with delayed satisfaction, if any"—what does that mean? A. I suppose seduction is used in the way that they want to entertain a mass of people, but as you come away from a lecture with something and you don't obtain any satisfaction from it as you leave.

Q. You would say that language has nothing to do with sex—"mass seduction and delayed satisfaction"? A. Not



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necessarily. I think here it probably does refer to—it is carefully worded. We speak of a spell-binder as seducing a mass of people, but we get very little satisfaction out of his speech. But I think this really probably refers to the sexual satisfaction that a group of people get in cheap burlesque. I think that is the purpose of the whole article.

397

Q. Continuing: "It can't be the divine event towards which all esthetic creation moves; but it is a relief after some mincingly disagreeable expressions of sexual impotence or variation." A. That pretty much clears up your form of question, I should think.

Q. There is not very much doubt about what he is talking about? A. No.

398

Q. He refers to sex satisfaction and seduction sexually. And you say there is nothing indecent or indelicate in this language? A. It certainly isn't indecent although I suppose some might consider it indelicate.

Mr. Bromley: Do you contend, Mr. Hassell, that any mention of sex in a magazine is obscene or indecent?

Mr. Hassell: No, I am not making any contention. I am simply contending what is here.

*By Mr. Hassell:*

399

Q. Now, coming to the Varga girls, or as they are described, the Varga wenches, in the January issue— A. Page, please?

Q. Starting at 97. You have answered counsel's questions that not one of these, either by picture or verse, is lewd, lascivious, indecent, filthy— A. Or obscene.

Q. Or obscene? A. That is right.

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400 Q. And I believe in answer to the direct question, Doctor, you pointed out the fact, or you stated as your reason for your conclusion, or as accompanying your conclusion, as a part of it, that the erogenous zones, breast and pubic regions, are not shown or emphasized in these drawings. Is that correct? A. That is correct.

Q. So, would you say that a picture, a photograph of a perfectly nude man and woman, or men and women in a group, unretouched, would that be obscene, lewd, lascivious, or indecent, showing frontal pictures? A. Men and women together?

401 Q. Yes. A. I think that might very well be indecent, and I think that might be the element here that might constitute indecency, if you had introduced a man into these pictures, dressed or undressed, as these girls are.

Q. In that connection, I show you a picture on page 22 of this book showing a nude female with the breasts and the pubic regions. Would you say that is obscene, indecent, lewd or lascivious? A. I think I would say that that is indecent and somewhat obscene.

Q. Now, I show you a picture—here is a picture of a group of men and women in the nude, opposite page 60—  
A. Definitely.

402 Q. —showing two women and two men. A. That is definitely obscene. That is precisely what I mean by obscenity.

Q. I am glad to have that statement, Doctor. These pictures, for the record, appear opposite pages 22 and 60 in "Nudism in Modern Life", by Morris Parmelee.

Mr. Bromley: Which book was held to be not obscene by the courts, Mr. Hassell.

Chairman Myers: Are you introducing that in evidence?

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Mr. Hassell: No, I simply referred to it.

Mr. Bromley: If the Board pleases, may we have Mr. Hassell identify for the record what the book is, that it is the book—

403

Mr. Hassell: It is "Nudism in Modern Life", by Morris Parmelee, Sunshine Book Company, Mays Landing, New Jersey, 1941.

Chairman Myers: I think that is in. I believe the reporter got it. I heard Mr. Hassell say the book is Nudism in Modern Life, by Morris Parmelee.

Mr. Hassell: Yes.

Mr. Bromley: I want him to say what is true, that this is the book involved in the Parmelee case which was held to be not obscene or indecent by the Court of Appeals of this District.

404

Mr. Hassell: That is correct.

*By Mr. Hassell:*

Q. Doctor, referring further to the Varga girl on page 98 of the January issue— A. That is the second one, February?

Q. Yes, the January issue, page 98—February—before we get on that picture, would you concede or admit or state that clothing is often used by the female sex to enhance their charms? A. Yes.

405

Q. That a little bit of concealment adds to the allure sexually? A. Yes.

Q. Now, as to this February Varga girl, you will notice that she is half reclining, which, by the way, is a more or less favorite pose, is it not, of these Varga girls? A good many of them are recumbent? A. Or semi-recumbent.

Q. This girl has her back to us and thrown carelessly

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406 across her thigh and part of her buttocks is what purports to be a magazine called "Dreamland".

Would you say there is nothing seductive, salacious, or appealing sexually or designed to incite sexual desires in that pose and picture? A. I think there is nothing seductive or obscene. It is attractive, I don't think it stimulates the average individual, particularly in a sexual way. I think the verse explains that here is a beautiful girl, in a pensive mood, thinking about her sweetheart over there. I think it is a good, clean picture as glorifying a good physique and good American womanhood.

407 Q. Where does it say in the verse that she is in a pensive mood? A. It says here "February makes me dream of castles in the air, the castles that we'll live in when it's over over there".

Q. But you can't see her face. You don't know whether she is laughing or grinning or what. A. No, but what you can see and that verse would indicate she is in a pensive mood.

Q. Can you say there is nothing indecent— A. Emphatically not.

Q. —or overly seductive in the March pose? A. No.

408 Q. Now, coming to April, I believe you stated that these from an artistic or draftsman's standpoint, have various parts over-emphasized. A. I didn't say that, very definitely not.

Q. I beg your pardon. You would say that they are out of proportion. Is that what you said? A. No, I didn't say that.

Q. You didn't say they had longer than natural lines? A. I didn't say that.

Chairman Myers: Mr. Bromley stated that in his opening statement.

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*By Mr. Hassell:*

409

Q. Would you admit that the lines of this figure, or the breasts are over-emphasized? A. I would not.

Q. They don't appear to be to you? A. No, they don't.

Mr. Bromley: I think her feet are pretty big, Mr. Hassell.

The Witness: I think her feet are too large there, and too small in the next one. The comments I have heard about the Varga girl are that their feet are out of proportion.

410

Q. That is the only reaction you get from the women?  
A. Yes.

Q. What reaction did you get from the men? A. That they are attractive.

Q. Beautiful, attractive, seductive? A. Not seductive.

Q. Exciting? A. I never heard that. Attractive, beautiful, nice figure, good physique.

Chairman Myers: Here is a suggestion, gentlemen. Would this be a good time to interrupt you, Mr. Hassell?

Mr. Hassell: Certainly.

411

Chairman Myers: Would this meet with your convenience? Would you be just as well satisfied to come back at one o'clock?

Mr. Bromley: Yes.

Mr. Hassell: I would like until one-thirty today.

Chairman Myers: We will come back at one-thirty.

(Whereupon, at 12 o'clock noon, the hearing was adjourned until 1:30 o'clock p. m.)

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**AFTERNOON SESSION.**

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(The hearing was resumed, pursuant to the adjournment, at 1:30 o'clock p. m.)

Chairman Myers: Are you ready to proceed, Mr. Hassell?

Mr. Hassell: Yes.

Chairman Myers: All right, whenever you are ready.

413

**KENNETH J. TILLOTSON**, resumed the stand and testified further as follows:

*Cross Examination by Mr. Hassell (Continued):*

Q. Doctor, referring to the May Varga girl picture, at page 103 of the January issue, would you say the costume she has on is a bathing costume? A. I should think so, yes.

Q. Without anything to hold it up over her breasts? A. I don't know what the attachments are around the neck. You can't see the neck.

414 Q. Would you say that the pose and the smile of this girl is provocative? A. No. I would say she has the Mona Lisa smile on.

Q. Which is alluring? A. The Mona Lisa smile is alluring, people have said it is. I wouldn't say it is, no. And, in fact, it is a very little smile, it is only a suggestion of a smile.

Q. You interpret that as a suggestion of a smile? A. Yes.

Q. I call your attention to the fact that this is a semi-reclining pose. You say there is nothing indecent or suggestive in this picture? A. No.



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Q. Now, the June picture. This picture shows a woman half crouched. Manifestly she has no cover on her breasts which are partly concealed by her left arm. Would you say there is nothing indecent in that pose or that picture? A. Nothing whatsoever.

415

Q. But if that picture left off the flowers or whatever lies along her arm so as to show her nipple, you would have a different view. A. I think if it exposed them it would be different, yes.

Q. Now, in the July picture on page 103, the verse in the last two lines:

"Whoever dreamed this suit up  
Took a lot of liberty".

416

(Do you agree with that conclusion? A. Well, if that refers to the costume of the girl, I don't. I mean, I don't know what that means.

Q. Well, the verse "July" is on the page of the Varga girl. A. July is a patriotic month.

Q. Yes.

A. "July's a patriotic month

And you will all agree

Whoever dreamed this suit up

Took a lot of liberty".

417

Q. Yes. A. That is perfectly all right. That is, July Fourth is a patriotic month and is a patriotic date. I don't think it has any reference to the girl.

Q. This suit consists, as you can see, of a very scant set of panties, which are put on in such a fashion as to emphasize the buttocks and the person took a lot of liberty in clothing

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418

this figure so scantily. Isn't that what that means? A. It could mean that, I suppose.

Q. Isn't it a fact that the painting of these pictures in such a manner is to show there is no clothing around the upper part of the body, including the breasts, although the showing of the breasts in this picture is not clear and it is done to emphasize those parts of the body and make the mind follow through? A. You mean emphasize by concealment?

Q. Yes. A. I wouldn't accept that at all.

Q. You don't think there is anything in this pose or picture which is in any way indecent? A. I do not.

419

Q. Coming to the August picture on page 104 with the verse:

"I find a cool, secluded beach  
A perfect August shelter,  
But all the men who pass my way  
Just look at me and swelter."

Do you think this figure would be more indecent, if the very scanty costume, was left off? A. Oh, if the costume was left off I think it would be another matter. Yes, indeed.

420

Q. But isn't it a fact, Doctor, that this costume emphasizes the lines, the hollows, and the protuberances of the figures? A. Yes, I think women's clothes in general do that.

Q. Well, you think that this picture is not calculated to incite the man to look at it? A. I don't.

Q. At all? A. I don't.

Q. By the verse "Just look at me and swelter"—isn't it a fact, Doctor, that sexual excitement causes a rise in blood pressure? A. I think all excitement does, I think sexual excitement no more than any excitement.

Q. It is generally accepted— A. That all stimulating emotions increase the blood pressure.

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Q. Isn't that what the verse refers to? A. It might or it might be the hot August day.

421

Q. Do you see anything hot about this picture? A. No.

Q. Or the background? A. No.

Q. It is a perfectly plain effect then, isn't it? A. That is right.

Q. There is no beach or anything? A. No.

Q. Coming to the September picture on page 105, in the verse:

"September brings us cooler days

But still I have to pose on

Oh, Mr. Varga, hurry up

422

And let me put some clothes on."

Would you say that verse, taken with the scantiness of the costume of this model, was calculated to emphasize the lack of clothing? A. No more so than the cool days of September which she is portraying.

Q. Do you see anything in the shading of the central portion of this figure which might suggest that this garment she has on is transparent? A. I do not.

Q. This figure and the August figure are both recumbent on their backs. That seems to be a favorite Varga pose. A. Also a favorite—yes. I wouldn't say it is more than a favorite. Others are sitting or semi-reclining. I think these represent beach figures. I take it that they represent beach figures in bathing suits.

423

Q. Beach figures in September? A. Oh, yes.

Q. You say the September figure represents a beach figure. She has what looks like a full-length sleeve. A. That is right.

Q. Do you see any beach costumes with full-length sleeves? A. Oh, yes. I wear them myself on the beach.

Q. I thought that harked back to the gay '90s. A. What?

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424 Q. I thought that sort of costume harked back to the gay '90s. A. Maybe it does.

Q. Full-length sleeves. A. You go in for a dip on a cool September day and put a pull-over on.

Q. This figure hasn't got a pull-over. A. I don't know. If you know it is a pull-over or what it is. It looks like a jersey pull-over to me.

Q. There would certainly be nothing under it— A. I don't know.

425 Q. There is no evidence of anything under it. A. I don't know if there is anything under it or not. The burden of proof is on the person who says there is nothing under there.

Q. Of course, your eyesight might be rather bad. You don't see anything around the central portion of this figure? A. I don't believe any of these men here do either.

Q. You say there is nothing indecent or sexually alluring in that September figure or the verse? A. Nothing whatsoever.

Q. Or the figure and the verse taken together? A. No.

Q. And the same as to the October figure? A. That is right.

Q. On page 106, would you say that is a beach costume also? A. Yes, I think it is.

426 Q. Appropriate in the month of October? A. It depends upon where the person is. In a warm climate I think it would be appropriate.

Q. The verse says:

"October is a lovely month  
Of yellows and of reds,  
The leaves start turning golden  
And I start turning heads."

A. Yes.

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Q. Then, it would appear that is considerably north of Florida, wouldn't it? A. I wouldn't know. I thought this girl was on a spring board. It looked like a diving board. You will see some marks under her hands and feet. I think it is just as fair to assume that as to assume that there is nothing under the garment of the September figure.

427

Q. Do you see the nipple on the right breast of the October figure? A. I do not.

Q. You don't see it protruding? A. I see a pointed protuberance. It may be the shape of the breast or it may be the nipple. The nipple is very definitely not defined.

Q. The November figure—is that a bathing costume also? A. No, I would think that is some kind of a costume that women wear in circuses and there seems to be an animal there, a lion, and I would think she is perhaps a lion tamer or perhaps a girl in a circus or some show.

428

Q. Doctor, did you ever see a girl in a circus or show, a lion tamer, or in any other capacity, in as scanty a costume as that? A. Well, I have seen—in as scanty as this?

Q. Yes. A. Perhaps not, no.

Q. Would you say that is not indecent or sexually alluring? A. No, it is not.

Q. Now, the December figure on page 108. "A Merry Christmas to you all", this figure manifestly has no clothing at all above the middle. Would you say that is a bathing costume or a boudoir costume, or what? A. I should think it is a boudoir scene.

429

Q. And you say that figure would not be considered indecent or sexually alluring? A. Not in my opinion.

Q. Now, on page 123, the last column, near the top. "Dear Doctor Diddle: I am a beautiful brunet but I have a serious problem \* \* \* every time I take a bath I blush. What shall I do? Twenty.

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430

"Dear Twenty: Before you undress put on a blind-fold."

You say that suggests no indecency, Doctor? A. No.

Q. Neither the Dear Doctor Diddle nor the balance of the language? A. It does not, in my opinion.

431

Q. Now, page 137, here we have what appears to be two air raid wardens not attending to business, and the legend under the cartoon "And to think I gave up drawing." I believe you stated that possibly these wardens were gazing through a skylight window into an art studio, and that possibly the model they might be looking at would be clothed or unclothed. Did you say something like that? A. I think that is exactly what I said.

Q. Will you please notice the eyes of the figure who is looking through the transom, which might be described as bug-eyed, is that right? A. Bug-eyed don't mean anything to me. You will have to use a different term than that. If you mean a look of surprise, yes.

Q. Surprise? A. Surprise, yes.

432

Q. He got his fingers in his mouth. Would you say that it is a pleasant surprise or unpleasant surprise? A. I would say it is pleasant surprise, the same as a lot of boys put their fingers in their mouths and whistle when a good looking girl goes by.

Q. A pleasant surprise? A. Yes.

Q. Isn't what he sees there pleasant entertainment? A. He probably sees an attractive female there.

Q. And the pose and the matter underneath the cartoon does not, as you stated, convey any indecent sexual connotations? A. It certainly does not.

Q. You have heard of the activities of the so-called Peeping Toms, Doctor, haven't you? A. I have examined a good many Peeping Toms.



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Q. You would not associate these fellows with Peeping Toms? A. I can honestly say I would not and have not until this moment when you called it to my attention. 433

Q. Certainly— A. I wouldn't call two air raid wardens Peeping Toms.

Q. Depending, of course, upon what they were doing, wouldn't you say? A. Well, a Peeping Tom doesn't look through a skylight window in company with somebody else. A Peeping Tom always operates alone, stealthily, and he gets his thrill out of being alone, not by being observed by anyone else, and here are two apparently respectable and patriotic citizens on a roof, bored with many long hours, as many people have told me, looking at a skylight. Maybe he is looking at a delicious meal. He has his finger in his mouth, and maybe that denotes that he is hungry. 434

Q. Now, this appears to be a popular theme with Esquire, the subject of this picture. You will note there is another picture in another one of the issues, which we will come to later, with a legend underneath that about the B-17. A man looking down towards the ground. A. Yes.

Q. And describing what he sees as a B-17. A. Yes.

Q. You wouldn't call those Peeping Toms, either, would you? A. I certainly would not.

Mr. Bromley: It doesn't seem to me that you would refer to it as being popular with Esquire when they refer to it twice in a year, Mr. Hassell. 435

Mr. Hassell: Well, I would say popular to that extent. I will modify it to please counsel.

*By Mr. Hassell:*

Q. You say there is no indecent inference to be gathered from that picture, Doctor? A. No.

*Kenneth J. Tillotson—for Respondent—Cross.*

436

Q. Now, Doctor, coming to the February issue, page 31, shows another reclining Varga girl. A. Reclining?

Q. Doesn't she appear to be reclining to you? A. No. I thought she was kneeling on her knee.

Q. Would her hair be flowing in the direction it is if she were kneeling? A. I don't know if it is flowing. It may be blowing back, I am not sure of that. I didn't think she was reclining. I am not contradicting you, I am only giving you my impression.

Q. You say there is nothing indecent in this photograph, Doctor? A. No, I see nothing indecent in it.

437

Q. On page 65 "What am I bid for this hundred pounds of sugar?" You assert that might have something to do with the rationing of sugar? A. Well, I said that figuratively speaking in this way, that in this country we do not, where in the Orient they do barter off women, and he says, "What am I bid for this hundred pounds of sugar," and apparently I thought that there might be some connection in the artist's mind that sugar was scarce and here was a sweet person of a hundred pounds. I thought it was a play perhaps on our current situation. That was a far-fetched interpretation like most of these interpretations that we read about.

438

Q. This figure is clad in what sort of costume would you call that? A. Well, I am not an authority on costumes, but I would say she is possibly a dancing girl, she has possibly a dancing costume on. I would think it is a tight-fitting costume and this sort of veil over that. I imagine she is a dancing girl, Oriental dancing girl. I thought—I think we would have to characterize that as a dancing costume.

Q. But her face is not veiled, is it? A. No.

Q. Yet the figures wear fezzes, the male figures? A. That is right. I think that the dancing girls in the Orient don't

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necessarily veil their faces, do they? I'm not sure about that.

439

Q. Doctor, you contend that the practice of selling women, so far as this country is concerned, and the readers of this magazine are concerned, is one that can be decently adverted to and portrayed in a picture of this sort? A. Well, if this was a practice, I would say perhaps not, but here, definitely, the selling is being done in the Oriental country. I am assuming that this is an Oriental girl. I am assuming that this is one of a series of the Sultan cartoons which run through Esquire.

Q. That is another feature of Esquire, isn't it? A. The Sultan feature seems to be a feature throughout. I see nothing indecent about it.

440

Q. You see nothing indecent or lewd or lascivious? A. No.

Q. Or sexually exciting? A. I do not.

Q. Now, coming to the article on pages 76 and 77 "Home Sweet Ruby Street," and then "Harlem was aglow with the joy of spring and only Mrs. Finn's conscience could keep her from singing like a bird." The cartoon at the center and bottom of page 77. I believe you stated you read that article?

A. I have.

Q. Or story, or whatever it is. A. I have.

Q. The cartoon and accompanying text portrays this, does it not, that Mrs. Finn coming to this Harlem household in which the young colored lady is in bed with a young colored man, there being present also two elderly colored people, or older colored people, and while Mrs. Finn sits there they proceed to get out of bed and dress in her presence, and it is stated to the left "Mrs. Finn entered with considerable alacrity the living quarters of the Vermillion family. She noted with regret that Society had not yet arrived, due in

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442

part to the early hour, in part perhaps to the fact that the Vermillion's bowing daughter, Mrs. Edna Wilson, and her fiancé, Radiant, were not yet up. They arose when Mrs. Finn entered, sulkily rubbing their glossy fists against their cheeks. Mrs. Finn, on noting them, longed for a fan, but blamed it giddily on the springtime." And then the story goes along further and fits in with the cartoon in the center column near the center of the page where it is stated, "It was not the response Mrs. Finn had hoped for, and left her at rather loose ends. Thinking it better to begin afresh, she fastened her good eye severely on her notebook and presently flung at Mrs. Vermillion a new leaf, the writing on which became slightly furry as her wandering eye, cast presumably in the direction of the ceiling, caught Edna and Radiant gingerly dressing. Radiant, only half clad and suspecting the vagrant eye to be focused on him, winked slowly at Mrs. Finn." Now, you contend there is nothing indecent in that?

443

A. Not indecent. It is commonplace and perhaps, taken as you have read those paragraphs, isolated, in poor taste. It must be taken in its whole setting. The article must be taken as a whole, as representing a part of society with a sort of thing that undoubtedly occurs very frequently, and I don't think that the article, as such, can be taken as indecent or obscene. It is commonplace.

444

Q. I believe on direct you went over most of the indicated portions of the article "The Unsinkable Sailor". It starts on page 30 and extends over on page 95.

I recall the reference to the establishment known as the Black Cat, and the lines:

"I grabbed a piece of broken glass and I yelled 'The first sonovabitch that moves I'll cut his head off.' They left the room—but I went to the hospital."

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I don't believe that was covered. Beginning below the boxed in matter in the second column the words:

44

"At any rate, then I get this touch of dysentery"—

A. I am sorry, Mr. Hassell. I am trying to follow you. Could you give me the citation?

Q. On page 95, just below the boxed in matter— A. I have it.

Q. "At any rate, then I get this touch of dysentery and the skipper sends me to a doctor and this tonsil mechanic, he wants I should bring him back a sample. So I buy me a nice fruit jar and go back to the ship to follow the doctor's orders. Before I go ashore again, I come into possession of some keys, these keys happen to enable me to become the proud and happy owner of six quarts of whiskey. So that kept me busy for a while. I finally went ashore, with my little fruit jar under my arm, all wrapped in paper, as tidy and neat as a pin. But I didn't go straight to the doctor. I stopped off at a bar or two—and then I visited an establishment where unfortunately I had my pants and shoes stolen. So in turn I stole a curtain and wrapped it around myself in a becoming fashion and hurried off to the best hotel in the town. I had grown a beard, and I fancy I made quite a picture. I went into the bar of this hotel, which was all filled with captains and colonels and gentlemen in twin-screw jackets, and I sat my fruit jar on a table and sat down and ordered some gin and bitters. Everyone was looking at me, and I heard one fancy gazooney say to another, 'I say! Doesn't he look like Lawrence of Arabia?'"

446

"The upshot of it was that after fortifying himself with a few quick ones, Showboat ordered the waiter to get the manager for him.

447

"What kind of a safe have you got here—a combination or a key-safe?", demanded Showboat in his most autocratic manner. The manager said it was a combination.



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448 "How many people working here know the combination?" asked Showboat. "This is very important matter which I brought here from the States. Will you keep it in the safe for me and I will call for it in the morning," and he handed over the wrapped fruit jar.

"Then I asked for a suite of rooms, and a native boy to fan me to keep the insects away, and a bottle of whiskey. The next day I went to a tailor and got me a pair of pants and a pith helmet—and then I went back to the ship. We sailed that day \* \* \* I wonder how long that manager will keep my package in the safe for me."

449 And then continuing—skipping two paragraphs—and continuing with the bottom of the third column:

"There is a new secretary in the union hall who isn't used to sailors or their language.' It seems Showboat went up to her when she was alone in her office, bent over her shoulders, loop-legged drunk, and rasped, in his peculiarly hoarse and penetrating voice, 'How's chances to lower the boom on you, sister?' The girl jumped up in terror and ran screaming from the room. 'Oh, that man! That man!' she cried, 'Help! he wants to do something terrible to me.' It took quite a few people to calm her down and convince her that this is only Showboat Quinn's way of asking 'How about lending me two bucks for a cup of whiskey, lady?'"

450 Do you say, Doctor, that there is nothing indecent in that story or article? A. Nothing, absolutely. Absolutely nothing.

Q. And that no other inferences than perfectly decent proper language can be drawn from just what I have read? A. I think probably other inferences could be drawn, but I haven't the slightest idea of what you mean by those inferences, and it is a typical merchant marine story, somewhat commonplace, but inoffensive.



*Kenneth J. Tillotson—for Respondent—Cross.*

Q. You say "a typical merchant marine story." A. Yes, sir. That is their language, and they say "Lower the boom" when they want to touch somebody for a little loan.

451

Q. What is that? A. They say "Lower the boom" when they want to touch somebody for a little loan. They use the vernacular, these expressions.

Q. This is, you say, a perfectly commonplace merchant marine story? A. Yes.

Q. Do you mean published in other magazines? A. I can't cite any at the moment, but this is the way merchant marines talk.

Q. Did you ever see merchant marine stories in the Saturday Evening Post and Collier's that had any such language in them? A. I don't know that I have.

452

Q. You know, as a matter of fact, that they have in the past carried many such stories? Do you know the Gilpatric stories? A. I think in Collier's I could cite some. No, I can't—but this is consistent with merchant marine language at any time. But the jar episode is commonplace.

Q. If you will refresh your recollection by referring to merchant marine stories in Collier's and the Saturday Evening Post you won't find anything comparable to this, the theme of the story and the language used.

The word that appears in the first column, the "first sonovabitch"— A. It is poor taste.

453

Q. Do you say it is not indecent or lewd or lascivious? A. It is poor taste.

Q. Would you say the word is not filthy? A. It is not filthy.

Q. In your answers to my questions and those of counsel on direct, have you had in mind the statements of the various courts with respect to certain types of language or publications going through the mails? A. Yes, that is right, the postal regulations, I think.

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454 Q. The Swearingen case referred to in the Supreme Court of the United States which led to the amendment of the section under consideration, 334 of 18 U. S. Code, and the Limehouse case? A. Yes, sir.

Q. Now, coming to the March issue, Doctor, we have first on page 9 the advertisement of Thorne Smith's three wittiest, most ribald novels. That is the heading of the advertisement. And I continue to read part of it:

"Now, in this big brand new volume! America's one and only Rabelaisian humorist!

455 "Only in the pages of Anatole France, Voltaire, and Rabelais himself can you match the lusty, zestful fun of Thorne Smith's novels. He is the modern master of daringly sophisticated satire. His characters are completely uninhibited in their passionate pranks; and no writer of genius has ever ventured to create such thrillingly improper situations! Such skillfully humorous skating on thin ice is unequalled in recent literature. Yet behind Thorne Smith's brilliant comedy is the deep, keen wisdom of the classic master that he really is! He broaches hypocrisy and sham modesty. It is this that marks the difference between the 'frank' classic and the merely shocking book. Thorne Smith is as shocking as Rabelais—and as wise! As fantastic as Cervantes—and as full of truth.

456 "Glance at the titles of the three sparkling Thorne Smith novels included in this entirely new volume—The Thorne Smith 3-Bagger—(the successor to The Thorne Smith Triplets, and the Thorne Smith 3-Decker) and you'll decide you must have it for your very own. It is big \$2.50 value (and spicefully illustrated by Roese!), but we have decided to let new Guild subscribers have it without cost! Your's free if you join the Guild now."

Would you say that that language holds out to the reader

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choice tid-bits of indecency and obscenity? A. No, I would not.

457

Q. You have not read those books, have you? A. No, I have not.

Q. So, you don't know whether they are, in fact, obscene books? A. I do not.

Q. And you would not know whether this advertisement is a violation of the postal obscenity statutes as telling where obscene matter may be obtained? A. I wouldn't say in the content of this advertisement—no, no, the answer to your question is no, sir.

Q. Now, coming to page 10, Doctor—

458

Mr. Bromley: Could I ask, if the Board please, if there is any contention that any of these books have been banned?

Mr. Hassell: I am not making any contention now. I don't know whether they have or not.

Mr. Bromley: Well, they have not been.

Mr. Hassell: I would not be able to state, although I might say I read the Glorious Pool and that is a rather questionable book.

*By Mr. Hassell:*

459

Q. On page 10, the second column near the bottom, "On putting Esky in a cap and gown", I read you this, Doctor, in connection with your answers to a question on direct with respect to the covers of these eleven magazines:

"Succeeding issues of your enticing magazine present exceeding dilemmas for yours truly. I am an English teacher in a small-town high school. (You probably envision a bald-headed gentleman gazing at Varga-vistas of forbidden fruit,

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460

but, as a matter of fact, I am quite young and that's not my dilemma).

"My dilemma is this: I am tempted time after time to bring a copy of *Esquire* to my Senior Literature Class, and give my pupils the benefit of the excellent criticism of Mr. Phelps and the high grade fiction of Manuel Komroff, Jesse Stuart and others. The only way in which this could be done, without disturbing small-town codes of conduct, would be to somehow camouflage that bulge-eyed masher on the front of each issue and make it appear like the front of, let us say, Harpers or the *Atlantic*.

461

"Could you get Salvador Dali to work on this for me?"  
"Sincerely, Somewhere, Indiana."

Now, Doctor, from that—shall we say criticism—of the front covers of *Esquire*, would you wish to modify your statement on direct that there is nothing indecent, obscene, lewd or lascivious in any of these covers of any of these eleven magazines? A. No, I don't think that letter implies there is anything lewd, lascivious, indecent or obscene. I think that letter indicates it would be rather unusual for a teacher in a small community to take anything as perhaps—say a magazine like *Esquire*—into a senior class, but apparently he is very much impressed with its contents. I think it is rather a serious letter and I see no reference to obscenity.

462

Q. The senior class in high school would be individuals usually 18 years of age, would they not? A. The upper part of the class, 18 perhaps, or perhaps 19, but I think more of them would be around 17 or perhaps even 16.

Q. Usually when the ordinary individual enters school at six, they come out of high school about 18? A. I am judging by the superior group I see at Harvard. At Harvard it is usually 17 or 18.

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Q. We are not talking about exceptions. A. The average would be around 18, I think. 463

Q. Would that age be ordinarily in the post-adolescent group? A. Yes.

Q. Now, with respect to this cover on this March issue, do you take that cover to be a cartoon showing three black African ladies looking over shrubbery, a hedge or whatever, at Esky, who is nude and in a tub taking a bath? Would you say that would be a description of that one?

Mr. Bromley: I object to this question, if the Board please, on the ground that never until now has any criticism been levied at this item in spite of repeated opportunities, and importunities from me to specify what he is complaining of. 464

Mr. Hassell: This is asked with direct reference to a question asked on direct examination.

Mr. Bromley: I only inquired as to one cover and that was the cover cited or specified by my friend here that it was indecent because the breasts of two models were over-emphasized.

Mr. Hassell: I think the record will show, Mr. Chairman, that the witness answered with respect to the figures in the covers of the various issues.

Mr. Bromley: No. 465

Chairman Myers: Let him answer the question.

The Witness: It is my opinion that this is not indecent.

*By Mr. Hassell:*

Q. That there is nothing indecent in this picture? A. No.

Q. No indecent reference to be drawn from it, Doctor?

A. No.

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466 Q. Now, going back to the January issue, would you say the female figure shown thereon has over-emphasized thighs?

Mr. Bromley: Same objection.

The Witness: The same answer, no.

Chairman Myers: Overruled.

Mr. Bromley: May I have an exception to both rulings?

Chairman Myers: You certainly may.

*By Mr. Hassell:*

467 Q. Near the center of this figure, do you notice any dark shading?

Mr. Bromley: Same objection.

The Witness: Same answer, no.

Mr. Bromley: Don't go so fast.

Chairman Myers: The same ruling.

Mr. Bromley: Exception. Now go ahead.

*By Mr. Hassell:*

Q. Now, on the February issue, Doctor. A. Yes.

468 Q. You say the breasts of the female figures shown thereon are not over-emphasized?

Mr. Bromley: May I have a general objection to this line of questioning?

Chairman Myers: Yes, you may.

Mr. Bromley: In so far as it applies to every cover, except April, which was the only one complained of in the pleadings.

Chairman Myers: Yes. Answer the question.



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The Witness: In my opinion they are not over-emphasized. The breasts are not over-emphasized in the February cover.

469

*By Mr. Hassell:*

Q. Would you say the same as to the April cover? A. Just a minute. Let me take a look at the April cover. Yes.

Q. They are not over-emphasized? A. Not necessarily.

Q. Would you say the same as to the November cover?

A. Yes, very definitely not.

Q. They are not? A. No.

Q. Over-emphasized? A. No, sir.

470

Q. And you find nothing indecent, lewd, or lascivious in any of these covers? A. I do not.

Q. The covers of this magazine? A. Definitely no.

Q. Now, coming to the picture of the Varga girl on page 38.

A. Which issue, please?

Q. Of the March, 1943, issue. I believe you testified, Doctor, that there is nothing obscene, lewd, lascivious, or indecent in this picture? A. I do.

Q. Would you say that the breasts of the figure shown in this picture, that is the left breast, is very much over-emphasized and the thighs are over-emphasized? A. No, not in my opinion.

471

Q. Do you note on that left breast the nipple point through the very flimsy costume? A. I notice that it is pointed and shapely. It is not unusually large from my experience in examining hundreds of women's breasts, and if there is a tight-fitting garment or form-fitting brassiere, it would show through just exactly like that, or in an evening gown or any dress.

Q. You haven't actually subjected this picture to measurements, have you, Doctor? A. To what?

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Q. To proportionate measurements. A. No.

472 Q. You have simply gone by your eye? A. That is right. the same as you are.

Q. Page 49, the cartoon, "I wonder how the Sultan knew this was my birthday."

Would you take from that cartoon—you will note that attached to the young lady's ankle is a tag "Happy Birthday". Would you take from that cartoon that the Sultan has sent to this soldier, who has his arms open, this very scantily clad girl as a birthday present? A. I don't say that. I got the idea that one Sultan had sent to another Sultan, who lives in the castle in the background, this girl, and this dumb officer, it happening to be his birthday, thought it had been sent to him. I thought it was rather amusing.

473 Q. How did you get all of that out of this cartoon? A. The same way that you got your interpretation that she is scantily clad, or that she is being sent to one of these officers.

Q. Now wait a minute, Doctor. As to the scanty costume, you can see her legs through this garment she has on, and you can see the lower portion of her body, and you can see the lower part of her legs, can't you? A. And her thighs.

Q. And you can see the buttocks and on down, can't you? A. No, you can't in the copy I have here. Maybe you got a better one than I have.

474 Q. Now she has a very flimsy brassiere on the breasts with the nipple sticking through. A. No, the nipple doesn't stick through this one. It is a very thick material. Perhaps my eyesight is bad.

Q. Perhaps you need better glasses. A. Perhaps I do. I honestly can say that in this copy that is what I see and I wish you would take a look at it.

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Q. You say you don't get the idea from this costume that the Sultan has sent this soldier who has this wolfish, shall we call it, smile, bleary eyes, or Eddie Cantor eyes, pop-eyes or bug-eyes, addressing the other soldier, telling him that the Sultan has sent to him this wonderful, entrancing birthday present? A. No, I don't get that impression at all.

475

Q. What would a soldier do with such a birthday present? A. Well, as a matter of fact, I don't think it is the soldier's birthday present. I think he has intercepted a person who is going somewhere else and he is dumb enough to think it and the other fellow looks surprised. You can use any interpretation on this.

476

Q. How do you arrive at the conclusion that this man who is apparently the recipient of the gift is an officer? A. Which one is the recipient?

Q. I judge the man who has the happy smile. A. I thought it was the other fellow. I judged it was the fellow that looked surprised.

Q. But one is supposed to be saying something to the other and the caption underneath this says, "I wonder how the Sultan knew this was my birthday," and the man who has the wolfish grin on his face— A. Which wolfish grin?

Q. (Continuing) —and the bug-eyes, and has his mouth open, so he is the only one who could be saying anything. A. No, the other fellow has his mouth open. I wonder if we are looking at the same picture.

477

Q. You say this fellow's mouth is open (indicating)? A. Yes, I think so.

Q. I can't see it. At any rate, you say there is nothing in this cartoon that is indecent? A. Absolutely not.

Q. Lewd or lascivious? A. Absolutely nothing.

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478 Q. Well, your conclusion is based upon your interpretation of what the picture means, isn't it? A. That is right, what is shown in the picture, what is there presented, and the sub-note.

Q. The what? A. The sub-note, the title.

Mr. Cargill: May I ask the witness a question?

Mr. Hassell: Yes.

*By Mr. Cargill:*

479 Q. In drawing your conclusions about these pictures, and your opinion, you have used your imagination as to what the picture represents in drawing that conclusion? A. That is right.

Q. Is that right, Doctor? A. That is right.

Q. So your imagination is used in the pictures? A. Yes, very definitely. That is, if I may explain that a little bit, these Sultan cartoons, all the way through, are apparently taken in the Oriental setting, the type of architecture. This is apparently Egyptian Oriental, and these soldiers are apparently French or Arabian soldiers, or something of that kind. This whole picture you see is an Oriental picture.

480 Q. You believe that any person who might look at this cartoon is drawing his conclusions by his own imagination or from his own imagination? A. Oh, yes.

Q. As to what this cartoon means? A. That is right.

*By Mr. Hassell:*

Q. Now, Doctor, referring to page 68, the article by Gilbert Seldes, "The Fall of the Flattering Word," and the paragraph in the center column, the last full paragraph,

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"Now it's a rare odd thing." Do you have that? A. Yes. I have it. 481

Q. This reference, "Now it's a rare odd thing that clothes which do"—do being italicized—"enhance the sexual attractiveness of women are sold to them for smartness—to make you more poised, to give something called 'allure'; rarely on the justifiable ground that these clothes will reveal and conceal so craftily that men will be driven mad with desire."

Do you think the scanty clothing of the Varga girls in these magazines is calculated to do that? A. No. I don't.

Q. Continuing with the reading: "That form of copy is restricted to perfumes. Given perfumes, the copywriter goes berserk. (Or maybe only becomes realistic.) Here you have all the traffic will bear in the way of suggestion—beginning with the fancy French names which suggest improprieties and running through quite a lot of suggestiveness, in a nice way, of course, but omitting feclthy pictures. Just why odors should be advertised carnally and fabrics not, I can't be sure." 482

And over in the next column, the next paragraph, "When we approach the young of the species, the innocent at college, we are a little franker. A 'show-off V-neck' or a 'skirt pleated for action' (on a bicycle, so be quiet) are at least 'functional' (of course the great surprise is to find all descriptions of clothes using the term 'fly-front'. Where I come from we didn't talk like that in front of the women-folk, we certainly didn't.)" 483

Do you note any indecent language or connotations in connection with those matters? A. No, I don't. Fly-front is pretty generally accepted now. I think when I was a boy we didn't talk freely about it, but I think it is talked about very frankly now, and this paragraph here, on the allure

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484 of clothing and the names of perfumes, since they are not mentioned, they are in the stores and shops with very suggestive names on them, but they are not mentioned here, so I see nothing objectionable about this article whatsoever. It is simply calling attention to those facts. I think this article is good, I think, taken as a whole.

Q. You think that article is written for the edification of the women readers of *Esquire*? A. Partly.

Q. This is a man's magazine, however, isn't it, Doctor?

A. Yes, but women read it.

Q. Now, page 107, the hill-billy cartoon "Seems like somebody's allers clamorin' to somebody to open up a second front, don't it."

485 Do you think that is perfectly decent; not indecent? A. I think it is not indecent; it is rather comical. Some of these hill-billy cartoons, as you see here and on post cards and in various other magazines, are rather good. I think this is a rather commonplace one.

Q. What do you mean by commonplace? A. Well, I think nursing a baby in public is commonplace. There isn't anything indecent about it, but it is commonplace and most women don't do it.

Q. By "commonplace" you mean it is not usual, Doctor?

486 A. No; it is not usual.

Q. Now, coming to the April issue, we have already adverted to the front cover. Page 38 is the Varga girl and the verse "Peace, It's Wonderful!", and the verse reads:

"When this military beaut  
Blows a root-a-toot-a-toot,  
As a signal that the victory is won.



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And her soldier boy relaxes  
After slapping down the Axis,  
And then leads her to the altar on the run.

She will him slumber heavily  
When he woke to reveille,  
And never bawl him out about his lapse:

But, unless my eyes deceive me,  
He won't be so lax, believe me,  
When the clock upon their mantel points to 'taps.'"

Do you, or do you not, see any indecent inferences to be drawn from that verse accompanied by this picture? A. I honestly do not. 48

Q. What do you think the last line has reference to: "When the clock upon their mantel points to 'taps' "? A. To the hour when taps is blown, just as it says.

Q. In other words, the hour for going to bed? A. That does happen to be the time when taps are blown, yes.

Q. Isn't that what is meant by this phrase in connection with this picture? A. Yes.

Q. The hour for going to bed? A. The hour for taps.

Q. When he retires with his beloved? A. It might be his wife, if he is married, here.

Q. But just— 489

Mr. Bromley: Wait a minute. There is only one way in the phrase, Mr. Hassell, you know that, don't you?

Mr. Hassell: Does it say his wife?

The Witness: He has led her to the altar.

Mr. Bromley: He has married her.

Mr. Hassell: I wouldn't get very much het up over

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this, but I think the Doctor is certainly, if I may comment on it, drawing on his lack of imagination if he doesn't apply the meaning intended by that phrase.

The Witness: Well, now, as a matter of fact, I see no double meaning in that phrase and I would be interested to know what it is.

Mr. Hassell: I think it is apparent.

Mr. Bromley: He marries her, and the sixth line of this verse reads, "And then leads her to the altar on the run." I take it that connotes marriage.

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Mr. Hassell: Yes, but I had reference to the going to bed.

Mr. Bromley: Married people do go to bed. Mr. Hassell.

*By Mr. Hassell:*

Q. Now, coming to the article on pages 60 and 61, continuing over on 163, "The Court of lost ladies." A. Yes.

492

Q. Is this one of the articles that you read over 20 times, Doctor? A. I read it several times, and this is the article that my adolescent boy read, and this is the article that has been read, and read a lot, because it is quite informative and, in my opinion, well done. The kind of article we ought to have more of in the press. It is a good article, and I got that testimony from several other people who have read this as well as myself. It is true to life, it is what is going on, and it discourages prostitution and the things which I assume you are trying to discourage.

Q. That is your conclusion? A. That is my conclusion.

Q. As to what the article says? A. That is right.

Q. In the first column of the first page, page 60:

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"A younger streetwalker, pert and shapely, in a suit of bright green, sneers in disdain and tries to move away. She cannot because the bench is crowded. So are all six of the prisoners' benches crowded by the sisterhood of the streets, the sisterhood of starvation, and of syphilis. They have all been 'on the turf' pursuing soldiers on leave and men without women. They have been making shrewd bargains for the sale and resale of imitation love. Young and old, white and black and yellow, they now attend the opening of Court. The young ones sit upright in fear or in bright boldness. The oldtimers whisper to one another and send signals by eye to friends among the spectators. Always the women shift and stir in their places. A heady stream of trade perfumes 'creeps through the great gloomy Court. Coldly the women stare at the policemen who dragged them in at midnight and must soon reel off their cell door tales. The women wrinkle their foreheads in unaccustomed thought and make ready old, useless lies, old, useless appeals for freedom. 'I'm a good girl, Your Honor. I never did this before.'"

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494

Over in the third column, beginning under the cartoon or drawing:

"She looks at the Magistrate in sweet dismay and delicately pats her eyes with a handkerchief. The arresting officer tells his story in a dismal rote: A glance and a whisper on a certain street and the quick sales talk. She put the price at three dollars and I then placed her under arrest. Yes, I've seen her before."

495

In the next paragraph:

"She can only deny his charge. And she does. 'I was only fooling, Your Honor, so help me God. I thought he was a friend of mine, the way he looked at me.'

"Laughter soured with sneers, jiggles up and down the benches and makes a fool of her. She scowls over her trim

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shoulder. Then, made reckless by anger, she raises her hip into an impudent strut. Her face, cleared of rouge and powder for her trial, takes on a sullen look. Thus she gives up, wordlessly reveals her lie."

In the next column, at the bottom, the last two paragraphs:

497

"A yellow skinned mulatto girl goes up. She is nearly six feet tall and in high red heels. Her long legs are beautiful and her hips are slender. She shows them off. In the customary vendor's movement she draws her camelhair top coat tightly about her for the brief moment before she takes the stand. She wears a turban of fur. A fawn of beaten silver gleams in the beaver skin. She's a ripe and yellow peach.

"A sad voiced policeman, well over middle-age, puts on his glasses and slowly reads his testimony. He had been sitting in his car on such-and-such a street. Along comes the defendant, no doubt a charming picture on her high red heels, her Kaffir eyes gleaming in the night. In good humor, almost gaiety, she had smiled and, for a modest consideration, in cash, had placed her person, lithe and yellow, entirely at his disposal. She had, moreover, recommended herself highly, saying that her imitation of love was mighty near the real thing.

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"He reads precisely: 'She thereupon asked me again if I would like a good time. Following my orders, I replied: "Yes, I would"'. She thereupon invited me to her room. I asked her after we got there if this was the place where we were going to have the good time. She said, "yes, darling". She then pulled off her dress and otherwise divested herself. I asked her if I ought to pay her first. She said "all right". I paid her with three marked one dollar bills, which are in evidence. She lay down. I then placed her under arrest."

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At the bottom of that column: "The attendant bawls again. The old girl on the front bench struggles to her feet. Once more her hands flutter to the platinum straws under her hat brim. Ruby gleams spill from her gems. Her rouge has been freshened by advice of counsel. Her lips, bartered in these times for dimes and quarters in loathsome hideaways, have been newly decorated, too. A snicker strikes her like a lash. Suddenly the attendant tells her to sit down again.

499

Other names are called. Tip-tapping heels that clicked their way last night in and out of houses and side street hotels come clicking now to the workhouse path. In swift succession, the women rise, fall, and pass through the door. Some, by grace of a good story, innocently told, go free. Not one cries out; not one protests."

500

At the bottom half of the third column on page 61:

"And now there comes a blond woman, young in years, not otherwise. Under lush mascara, her eyes send out plentiful looks of hate. She would be the last to deny that she is an old hand at the old game. Yet she's sure of one thing: Her name doesn't appear twice on the probation card. Nobody ever caught up with her before. And she's not caught yet.

"Not guilty", she sends her answer roughly over the rail. Her loud response hushes the women behind her, hushes the spectators who are at present bored and are chatting among themselves.

501

"The arresting officer tells his story. And so I put three dollars in marked bills on the table and when I came near her she let her dress fall. I then placed her under arrest. He steps down. The prisoner makes no bones about showing that someone has coached her. Quickly she begins to destroy his testimony. She remembers all that he said, re-

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502 calls it so exactly that one might suppose the trial had been rehearsed.

"Yes I was in a dressing gown. But I never said a word to him and it's not against the law to wear a dressing gown, even if you wear it on the street."

"Her Honor sees that the prisoner is a little smarter than the others. At least, she can remember a sentence from one minute to the next. She says, 'You testify that you were visiting at the apartment when the police came in'."

"Yes."

"Had you been there many times before?"

503 "Yes. What about it? Is that wrong?"

"No. I didn't say it was. Now, tell me again, please, what you did when the officer came into your room. Weren't you surprised?"

"No. Why should I be? He wasn't in uniform. And there were three or four men in the house. I just said 'Hello'."

"Did the officer say anything when he put the money on the table? Take your time before answering. He didn't testify that he said anything."

"No. He didn't say a word. I didn't even see the money until after he arrested me."

504 "The officer has testified that you took off your dressing gown in his presence. Is that true?"

"No, it isn't true. And that isn't what he said. He said I let it fall."

"Tell me what happened."

"He put his arm around me and the gown fell off my shoulder. Then he let it fall and he held my arm and laughed."

"You deny, then, that you were doing anything improper when the officers came into the apartment?"



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"I do."

"Case dismissed."

505

You say that is a decent subject for distribution in a magazine of 700,000 copies, 400,000 of which are sold through newsstands all over the United States— A. I say it is a decent—

Q. Just a minute. (Continuing): To be read by any person, young or old, who is able to read? A. I do.

Chairman Myers: Might that be considered descriptive literature?

The Witness: Yes, I think it could.

Chairman Myers: Describing a court room scene?

506

The Witness: That is right.

*By Mr. Hassell:*

Q. Now, coming to the June issue, Doctor, A. June?

Q. June. Page 34, the Varga girl picture, the semi-recumbent figure, very scantily clad. Do you notice in that picture the natural wrinkles of the body showing through the scanty garment? A. I notice the wrinkles in the garment which apparently is a close-fitting garment.

Q. You mean you note the umbilicus and the impression down the middle of the stomach? A. I know what the umbilicus is, and I don't see it any place. Now, I should like very sincerely to have you point it out to me.

507

Q. You 'can't put your finger on it? A. I don't even see it. I can see where it is supposed to be and there is no indication of it here.

Q. Well, my eyesight must be pretty good if I can see it. Now, the nipples of the breast are showing through this scanty costume, aren't they? A. I disagree with you, they don't show on mine.

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Q. Do you contend that there is nothing sexually alluring, indecent, lascivious or obscene or lewd or vulgar in this?

A. I do. I do contend that there is nothing lewd, sexually alluring or lascivious or obscene in this.

Q. And in all of these instances, Doctor, you are having in mind, aren't you, in connection with your answers, that these pictures and cartoons are in a magazine for the entertainment of men? A. Yes, but may be looked at by children, adolescents, women, and the whole American public.

509

Q. Now, coming to page 134, of the June, 1943, issue, "Libel suits were as wine to that hell-firin' editor of the *Old West, Dave Day*", by Roscoe Fleming. The lower portion of the first column: "Social items on the first page included such as these:

"Two weddings are on dit for next week. This weather kind of suggests two in a bed, spoon fashion."

What is two in a bed, spoon fashion? What does that mean? A. Very closely together, I would suppose.

Q. Male and female, or two females? A. Not necessarily.

Q. What? A. It might be two males or two females.

Q. Two males are that close together in bed? A. It could be.

510

Q. Two weddings— A. Such things occur, unfortunately.

Q. But here we have, Doctor, two weddings are on dit for next week in the same paragraph. You don't have two weddings of two males, do you? A. No. For two weddings there would be two males and two females.

Q. But would there follow that the males would go to bed together and the females together? A. No, it wouldn't.

Q. "This weather kind of suggests two in a bed, spoon fashion." Isn't it a fact that that conveys the idea of male and female in bed spoon fashion? A. Yes.

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Q. And there is nothing indecent in that? A. They are married. 511

Q. You say if they are married it is all right to go into details in a magazine distributed through the mails and throughout the United States on the newsstands? A. Well, it is done all the time.

Q. What they do? A. Well, as a matter of fact, there is no use of elaborating here, it is poor taste.

Q. But it is not indecent? A. No, it is not.

Q. It doesn't portray any indecent picture or induce any indecent thoughts or anything of that sort? A. Not particularly. 512

Q. What do you mean by not particularly? A. I mean a casual reference like that, I think, will escape the notice of most individuals who are not looking very carefully for the kind of material that you are seeking out.

It is poor taste as is the epitaph which follows.

Q. The epitaph:

"Here lies the body of poor old Charlotte.

Born a virgin, died a harlot.

For eighteen years she kept her virginity.

An all-time record in this vicinity."

You say that is poor taste and not indecent? A. It is poor taste. 513

Q. You wouldn't call that a ribald ditty? A. It pretty nearly approximates that, sir. That is the one thing in all of these articles that I think comes the nearest of being on the line of indecency. Perhaps it is the only thing that comes near the line of indecency.

If you take that out of its setting, like the two in bed, spoon fashion, and the epitaph, I would say they are in-

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514 decent, but published in this article I would say it is poor taste.

I would say it should not or would not ordinarily pass a censor and I wouldn't advocate the dissemination of that character of material, which is quite different from all the other material you have cited, in my opinion.

Q. These 40 people, old and young, that you submitted these cited articles, pictures, cartoons, and so forth, to, none of them criticized, or none of them said that these things I have just read were indecent? A. The epitaph—several of my colleagues said it was corny, meaning by that it was 515 an old one, something that you have seen many times. I remember seeing that in my boyhood. I think it was written on the wall of the backhouse when I was a boy in school, and it borders on indecency.

Q. But none of the people to whom you submitted this have said that these things were indecent? A. No, they did not.

Q. Now, the next one following the one that you last read:

516 "In future, all communications to the Muldoon will be marked with an asterisk to show that the editor disclaims responsibility. Each correspondent will have his own." A. Will you give me that page again?

Q. Page 134. That is the second column. A. I see that.

Q. You see no indecent inferences in that? A. You mean the excessive punctuation mark there?

Q. In the Muldoon paragraph I read. A. I am sorry, Mr. Hassell. I don't get your question.

Q. You see nothing indecent in that paragraph?

Mr. Bromley: Of course, you didn't read it the way it is printed.

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The Witness: As it is printed here, I don't see anything indecent, no, sir. 517

Mr. Hassell: I think the record will show I read every word there.

Mr. Bromley: The sentence ends: "Have his own \*."

Mr. Hassell: I will accept counsel's amendment.

Mr. Bromley: Would you mind telling me now where the filth is in that?

Mr. Hassell: I am asking the witness.

Mr. Bromley: He doesn't see it and neither do I.

Mr. Hassell: I submit the witness should be allowed to answer. 518

Chairman Myers: I think he has.

Mr. Bromley: Will you tell me, Mr. Hassell, just for my information—

Mr. Hassell: I will tell you later, Mr. Bromley.

Mr. Bromley: Don't forget it. I think the Board would probably like to know.

*By Mr. Hassell:*

Q. "When Chipeta, queen of the Utes, went to Washington, Day pretended that she had been seduced there by an eminent gold-standard statesman. He followed the case for nine months, announced the birth of a boy, named by Day for the statesman, and chronicled the alleged boy's growth for years by that name." 519

Do you see anything indecent in that? A. None.

Chairman Myers: We will now take a recess for ten minutes.

(Whereupon, a brief recess was taken.)

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Chairman Myers: We are ready to proceed, gentlemen.

*B. Mr. Hassell:*

Q. Doctor, turning to the May issue, page 32, the article "The savage beast in us," sub-title "Dispelling the hopes of burlesque entrepreneurs and fears of censors that the strip has sensory appeal", by Paul Gallico—I believe you stated you had read that article? A. I have.

Q. And you found nothing indecent in the article, nor in the illustrations accompanying it? A. That is correct.

521

Q. Referring to the sub-title, Doctor, do you hold that the strip has no sensory appeal? A. No, I do not say that the strip has no sensory appeal.

Q. Did you have a different idea of the sensory appeal of the strip after you had looked at the illustrations and read the article? A. I didn't mean that this article gave me any information I did not have heretofore, but I thought it gave a good many readers and the public at large a very comprehensive and factual and helpful information concerning it.

522

Possibly youngsters who had never seen a burlesque would certainly get the idea that it is not worthwhile from this article. I think this article points a good moral.

Q. But, as far as the effect of the article on you, it did not debunk strip of its sensory appeal? A. No, I would say not necessarily.

Q. In the first column on page 32, beginning with the third paragraph, this article reads:

"Let us, for instance, consider that absurd accident of human anatomy known to science as the umbilicus, which is presented nightly as a treat to the public eye at prices



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varying from four dollars and forty cents for an orchestra seat to blanket inclusion among the benefits covered by the two dollar couvert charge in cafes and night spots.

523

"Who told those congenital nit-wits there is anything stimulating, or mildly entertaining about this ridiculous wrinkle staring like a blind eye from the center of an expanse of otherwise not too revolting epidermis?" A. That is right.

Q. Is this particular part of the anatomy ever an erogenous zone, Doctor? A. No, the umbilicus is not an erogenous zone. In fact, it is exposed in bathing costumes without any complaint, and I think it is exposed in burlesque and stage without any censorship. The umbilicus is not an erogenous zone or a forbidden zone.

524

Q. You mean without any complaint from you? A. Or anyone that I know of.

Q. Or that you know of? A. Yes.

Q. Are you acquainted with all the bathing beaches in the country? A. No, sir—those in New England.

Q. At none of those beaches, those bathing beaches, are women required to wear a covering? A. It is my recollection that many of them do, but I think it is not required.

Q. Continuing with this article:

"I have yet to hear of a single instance where any average male, having been confronted with this tid-bit, has rushed panting into the night to seek assuagement for the fires kindled in his circulatory system."

525

What does that refer to, Doctor? A. I suppose to his passions being aroused, but that they are not aroused by this commonplace sign of the umbilicus.

Q. But the idea is that there might be on occasion persons who might do that? A. No, I think it implies there is not

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anybody. He never heard of a single instance where that occurred.

Q. By reason of the exposure of this anatomy? A. That is right.

Q. But probably by the exposure of some other part of the anatomy. In other words, he would not have made the statement without any basis at all, if never in the human experience had such a thing happened, would he? A. He states there that never in his experience, to his knowledge, has it ever happened.

527

Q. That is, with respect to the exposure of this particular part he is talking about? A. That is right.

Q. I continue:

"If anything, this abdominal replica of Polyphemus has the chilling effect of examining a fine piece of velvet and finding a cigarette hole in the middle of it. Yet, costumers are encouraged to expose this silly scar on the theory that men and women will queue up at the box office or night club gates to get a peek at it."

So there are persons in the theatrical business, who think that does have an appeal. Is that what you draw from that? A. That is what I get from the whole article, that he is trying to debunk the burlesque.

528

Q. The third paragraph below that:

"The 'bump' appears to be a violent twitch whereby the artiste gathers up all of the area immediately south of the chest and hurls it in the general direction of the audience, aimed at hitting some man, in the fifth row, right between the eyes."

Do you think there is anything indecent in that description of the so-called "bump"? A. No, I do not.

Q. Do you think there is anything indecent in the bump as he describes it? A. No.

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Q. Continuing:

"The gesture is held to be fraught with aphrodisiac significance, a sure-fire yank of the hair trigger that is supposed to control the beast in us. Oh, yeah?"

Do you think that is an appropriate subject for inclusion in a magazine going through the United States mail? A. I certainly do in the sense in which it is written there. I think it is an excellent article.

Q. Now, in the next column, the second paragraph:

"The supposedly sultry 'grind', in which the performer revolves her hips in time to music while the rest of her stands still, may have practical value as a slimming exercise, but performed in public and by herself, I must report that from the viewpoint of the average susceptible male, the results are negative. On the contrary, it has undeniable comic aspects. A lady engrossed in delivering herself of these revolutions, her face transfixed with the curious far-off stare resulting from the muscular effort, reminds me of nothing so much as a gal who has backed herself up against a tree or a wall and is attempting to scratch an itch she can't reach".

Do you think a description of the reaction of the average male is a correct, true and proper one? A. I do.

Q. That is the reaction you have? A. Yes.

Q. And also his description of the "bump", that is the reaction you have to that? A. It is.

Q. Now, as to backing herself up against a tree or a wall and attempting to scratch an itch she can't reach, do you think there is anything indecent in that? A. I do not.

Q. You think it is perfectly proper that you put down in print for all and sundry, young and old, male and female, to read in such an article, the idea that a woman would so comport herself? A. I do.

529

530

531

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Q. That is perfectly decent and proper? A. It certainly is.

Q. Do you think there is anything decent in the figure or drawing in the center of page 32? A. You mean indecent, do you not?

Q. Yes, indecent. A. No, I do not.

Q. Do you see anything indecent, vulgar or lewd, or lascivious in the figure drawing at the bottom in the fourth column of page 32? A. I do not.

533

Q. In that figure you will notice whatever she had around her neck or shoulders has blown off of one breast, exposing it. A. Well, I can see both breasts in this picture.

Q. One of them is uncovered. A. They both seem to be in this picture. You are referring to the figure at the left of page 32?

Q. The figure at the bottom of the fourth column on page 32. A. Oh, page 32.

Q. Page 32. A. Yes. If you look sharply you can see the right breast in outline.

Q. And you find nothing lewd, lascivious, indecent or improper in that? A. I do not.

Q. Now, at the top of the first column on page 33, beginning in the second line:

534

"As a kid, you will remember wondering how that fat dame with the back porch of a hippopotamus ever got into the burleycue chorus. Later you learned that she was put there for the guys who liked fat dames."

Do you note anything indecent, vulgar, lewd, or lascivious in that? A. I do not.

Q. What have you to say with respect to the figure at the bottom of that column on page 33? A. I see nothing lewd, lascivious, vulgar, or filthy, or indecent about it.

Q. Would you say the same with respect to the figure

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in the center of the second column of page 33? A. I would.

Q. Now, what have you to say with respect to the matter at the bottom of column two of page 33, beginning:

535

"The strip tease of the burlesque chains lately elevated to a national industry, is nothing more than a physical projection of a facet of the psychologie erotique of the average male." A. I think that is probably a true statement.

Q. "To put it in terms that even I can understand, when a gent sees a pretty girl concealed by a lot of clothes, he immediately wonders what dwells beneath them, and literally eliminates the garments, one by one."

Do you think that is true? A. I don't necessarily think the average man does that. I think some may.

536

Q. You don't think the average man would do that with respect to these Varga girls? A. No, I do not.

Q. Continuing with the reading:

"This harmless practice often puts him into the mood to part with diamond bracelets, emerald clips, sable coats, or even proffers of marriage which lead to happy homes in the suburbs, and little kiddies pushed about in prams."

That finishes that part of it.

Now, what do you have to say as to the decency or indecency or vulgarity or lewdness or lasciviousness of the picture at the top of the third column of page 33? A. That picture at the top is very much like actual people you see on the stage, in the Ziegfeld Follies, perhaps a little more burlesque than that, but there is nothing indecent or vulgar about it.

537

Q. Apparently this figure is only clothed with a bit of laurel or leaves about the mid-section. A. I don't know whether that is a garment or leaves or what, but certainly



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there is no indecent exposure. Everything is properly clothed.

Q. The umbilicus is shown. A. I don't consider the umbilicus improper.

Q. Wouldn't you take it that the balance of the figure has no clothing on it? A. She has some kind of veil on her back and something in her hand with wreaths of flowers over the hips, and there is something definitely over her neck and draped over her back and down around her left arm.

539

Q. But her breasts are uncovered. A. You can see the form of her breasts outlined, but still, in my opinion, no indecent exposure.

Q. Now, in column four, the second paragraph:

"The silliest joke played by nature on the girls, though unquestionably utilitarian, was the widening of the hips to make them look like ambulating hour-glasses. Night after night these hips, rimmed with feathers, electric lights, or assorted tinsel and rhinestones, are presented to audiences as the acme of erotic sophistication. It's all hooey, along with the chest cups, fringes, diadems, and other paraphernalia used to outline territory deemed illegal. The girls just look plain ridiculous, and guys who are supposed to be entertained are plain bored."

540

So you think that is a correct statement of fact? A. I do.

Q. And that is the effect it has on you, is it? A. Yes. I think that is the effect that the whole article attempts to convey to the reader.

Q. And you think this article will have the effect of keeping small boys out of burlesque shows? A. Well, I think small boys are not allowed in burlesque shows in the first place. I think if these young men read this article they



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would think twice before they paid \$4.40 for a ticket to see a burlesque, which is precisely what this article attempts to convey.

541

I think an article like this has a good moral influence on the average adult, the average young adult. By that, I mean adolescents and college men.

Q. Now, seriously, Doctor, do you mean to say that such a writing as this would set aside all the laws of God Almighty and Nature, as imposed on a man in his reaction toward the attractive portions of a woman's anatomy? A. I didn't say that. I said I think an article like this would have a beneficial effect morally and otherwise on young men of high school and college age, and I mean it most sincerely.

542

I wish when I was a boy I had articles like this to read, and I am allowing my boys to read them.

Q. You probably would have gotten quite a lot of kick out of them.

Continuing the reading on page 33:

"It is bad enough when these poor, chilly-looking monkeys are marching about, or trying to sing a song in unison. I will not touch upon the caricatures that occur when thus clad they engage in tap dances or acrobatic numbers which result in a girl's rear end, clad in white satin, suddenly appearing behind her ear, like a winter moon, when she tears herself in two in what is graphically termed a split, or ties herself into knots that resemble the confused physique of a clam. These performances may have merit as grand guignol, but where sex is concerned, it's a laugh." A. I think that "grand guignol" refers to a famous French burlesque.

543

Q. You agree with the statement expressed in that, Doctor? A. Yes, I certainly do.

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Q. And you think<sup>s</sup> that such statements, to the uninitiate, would induce them to save their money from such shows as this? A. I certainly do.

Q. You don't think it would have an effect of putting a keen edge on an otherwise keen appetite of an average adolescent? A. In my study of adolescence it doesn't work that way.

Q. Now, as to the Varga girl on page 38, you say there is nothing indecent in the pose and the figure or the scanty dress of this picture? A. I see nothing indecent.

545

Q. Do you notice the nipple of the left breast very prominently emphasized in this picture? A. I notice an outline which may be the nipple of the left breast.

Q. At page 48 there is another one of the air raid warden—I believe you object to the word "peepers"? A. I don't object to it.

Q. Well, you say that "peeping Toms" don't operate in pairs, in your experience. A. That is right.

546

Q. What do you think this fellow with the glasses is looking at, considering the picture and the statement underneath "She looks more like a B-17 than a P-40"? A. Well, I know nothing about airplanes, so the thing was actually meaningless to me except the pronoun "She" indicates he is looking at a woman and I suppose the B-17 and P-40 refer to sizes of planes, and I suppose he is using that figuratively about the size of some woman that he sees on the street.

Q. You don't get the idea from the cartoon that he is actually looking at an airplane, do you? A. No, I get the idea he is looking at a "she". Of course, he could be looking at a flying field.

Q. He is looking at what purports to be a congested section of a city and he is looking down. A. I thought he was looking at a woman.

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547

Q. You say there is no indecent inference to be drawn from this cartoon? A. It is hard for me to make any inference from it and it certainly couldn't be very indecent. I should think. If we knew what a B-17 and P-40 were, it would mean more to us, perhaps.

Q. Pages 86 and 87, "The Exploits of Esky", the central line of cartoons across these two pages numbered 29, 30, 31 and 32, and under cartoon 28 on page 87, the text reads:

"The lady dislikes men, but wants a baby, so I sold her a ticket for the Time when women can become pregnant by taking an electric shock. 'What do you want?' 'I want to see the red-headed dancer.' 'You won't need a ticket for that, just go upstairs and down the path.'"

548

"Down the path was a brook and Esky saw the Red Headed Dancer in swimming. 'Hurray!', he shouted, 'At last a pretty girl to look at.' 'Esky—you darling, won't you join me?' But before he could a Western-Postal girl tapped him on the shoulder: 'Follow me. You are to be the judge of beauty in Finnegan's Dell.'"

"Esky followed and so did the Red Head, dressing as she walked."

From that it appears that she was nude when she came out of the pool in front of Esky.

"The Western Postal girl started to sing singing telegrams:

549

"A happy birthday, Aunty Bess,  
Every day I like you less."

"But Esky wasn't listening—to one side of the path Esky saw the most perfect creatures disporting themselves in a Corot-like clearing. But the Red Head explained: 'That is the abode of the Libidos. Where they gather when they are

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550 not on men's minds." Esky watched them play gracefully or loll indolently by a tinkling fountain. The sound of their mellow voices lured Esky toward them like a magnet, but the Red Head grabbed him and held him. The Libidos joined in a ballet while leaves rustled an accompaniment. "Why do so many look like Movie Stars?" asked Esky. "Oh, they belong to men who are too lazy to imagine their own perfect woman so they adopt the likeness of a star and if you will look close, you will see one Old Hag, the libido of a man who just don't give a damn."

551 "Esky saw a mess drift by. 'Come,' said the Red Head, 'if you don't get to Finnegan's Dell, I'll be attending Esky's wake.' And the three of them hurried to the amphitheatre. The Western Postal girl explained: 'This contest is the result of an argument between Hollywood Big Shots as to which studio has the star with the best shape. Each has its queen garbed in a bathing suit and all you do is pick the prettiest.'

You understand by these Esky cartoons, Doctor, that Esky is Esquire? A. Yes.

Q. And this is one of the activities of Esquire as pictured in this cartoon strip. Is that your understanding? A. Yes.

552 Q. Do you see anything indecent in these cartoons or the text or the inferences to be drawn from them? A. I do not.

Q. Page 93, the picture "Broadway for the Boys," the Juke Joint Scene from the Eve of St. Mark," and the first two paragraphs of the text boxed in under the title, the picture showing a girl seated in a soldier's lap with her arm around his neck and another soldier seated at a table with a girl close by. The text:

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"These soldiers have come from a discussion of a hygiene lecture in which it was estimated that in the Army 20 per cent don't, 20 per cent do, and 60 per cent might."

553

What does that language convey to you, Doctor? A. Well, in view of the whole thing I think it may mean that 20 per cent go juking, and 20 per cent don't go, and 60 per cent might. This is a juking scene here.

Q. Continuing with the text:

"They are Quizz West (played by William Prince) and Francis Marion (James Monks), and they have already made considerable progress with the Bird sisters, Lil (Joan Dolan) and Sal (Toni Favor), perched on Quizz' lap."

554

"Lil tells how dull it was in town before the Army moved in, but hints there can be too much of a good thing. 'This is practically inflation, what we've got now', she complains. One thing leads to another, and another leads straight back to barracks when Quizz decides he belongs to the first 20 per cent. 'I have a hell of a hankering,' says Marion, 'But you're the strong, solid man, and you bear the purse. I bow to your judgment and follow.'"

Do you draw any indecent, obscene, lewd, or lascivious inferences from the text I have read and the accompanying picture? A. I do not. I contend that this refers to juking. This is a juke scene.

555

Mr. Cargill: Doctor, after you read that first paragraph—it says, "These soldiers have just come from a discussion of a hygiene lecture."

The Witness: In a hygiene lecture the intimate contacts with women are discussed and it does not have to be the extreme relationships with women, because they are lecturing to the soldiers now, and in all hygiene lectures they tell them to avoid such places

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as the juke places because that might lead to other extremes.

This picture is clearly a juking scene, and a hygiene lecture would not necessarily discuss what might be implied from this, namely, sex.

Mr. Cargill: Following again in the second column in that box: "Besides he belongs to the first 20 per cent". Does that still have reference to juking in your mind?

557

The Witness: This is in the second column. "One saying leads to another and another leads straight back to barracks when Quizz decides he belongs to the first 20 per cent." It could refer to sex.

Mr. Cargill: In other words, Doctor, in giving your opinions and your interpretations here, are you leaving out the things that it might refer to, and only giving your opinion on those things that might be on the better and glorious side, or are you giving us an unbiased opinion?

The Witness: I am trying to give you an unbiased opinion. Let us assume for the moment that this does refer to sex. I think it is still not indecent. I think it still portrays a moral, especially the article.

558

*By Mr. Hassell:*

Q. Is your understanding of the practice of juking, dancing, Doctor? A. Yes, dancing and social intercourse in restaurants and cabarets where they don't have an orchestra, but have juke boxes for music.

Q. In this picture there is no juke box and they are not dancing. One girl is sitting on a fellow's lap. A. That is true, but it says "The juke joint scene from The Eve of St. Mark." That is what gave me the idea of juking.



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Q. That is, your reaction to that picture and that wording was associated with the remembrance of the play, that the scene in the play was like that? A. I didn't see the play.

559

Q. You didn't see this play? A. No, I didn't see the play. It was by the sub-title and the heading that I got the idea that it was a juke joint scene.

Q. Now, coming to the July issue, the first title on page 10, *The Sound and the Fury*, what purports to be a letter from one Fred Appel of Paradise, Pennsylvania, in which Fred says:

"I am willing to pay my half buck just for a peek at the Hurrells and Vargas."

Do you think that reflects an average reaction of the readers of *Esquire*? A. Yes, I think a great many like the Hurrells and the Vargas. I think that is perhaps the chief attraction as far as the photographs and pictures are concerned.

560

Mr. Cargill: I am afraid I didn't understand that question. Did you say the principal attraction of *Esquire* is the pictures?

The Witness: No, as far as the pictures and photographs are concerned, I thought the Hurrells and Vargas were the chief interest. That is only a part. There are seven parts of *Esquire*, as I understand it.

561

*By Mr. Haasell:*

Q. Didn't I understand a while ago that you had not examined all these matters and all these issues, but you had confined to the matters cited and pointed out? A. That is right.

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562

Q. So you are not able to testify as to what is in the balance of the issues? A. No, I am not.

Q. I believe you stated that the picture on page 76, "Broadway for the Boys," and excerpts from "By Jupiter" the central figure in that picture showing the woman kneeling with her left leg up and her long dress pulled up to her middle, and showing a large portion of her breasts, is not indecent or has no salacious appeal? A. Well, in my opinion, she doesn't show a large portion of her breasts and, in any case, in my opinion, it is not indecent. It is a typical stage scene and in no way obscene.

563

Q. Page 87, "The Exploits of Esky," again, and the cartoons and text thereunder numbered 55 and 56:

"Esky unsnapped his wallet and rifled a roll of greenbacks. Immediately the surrounding water was filled with mermaids. 'You see—women are women the world over'.

"Esky turned to Verne: 'Say, there's something I've always wondered about mermaids.'

'I wouldn't know,' replied Verne."

What is your testimony now, Doctor, that these pictures, accompanied by these cartoons, are not indecent? A. Yes, it is.

564

Q. I believe you said on direct that the something Esky might have always wondered about mermaids might have been whether they had feet, is that right? A. How they got along on the ground.

Q. How they got along on the ground? A. Yes, whether they were amphibious or not.

Q. But that text, and these cartoons, together with the money, or rifling of bills, would not convey any other idea? A. It doesn't convey any indecent idea.

Q. And it wouldn't convey any idea as to how the mer-

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maids are constituted as to sex? A. It didn't, particularly, but it might. Even if it did, I wouldn't say they are indecent, or that the text is indecent.

565

Q. Page 141, there is some verse and doggerel boxed in on this page:

"Dog's Worst Friend."

And I read that verse:

"People  
who have dogs  
who shouldn't have dogs  
I hate them.

566

"People  
who have dogs  
and a mink coat  
and think they are doing their dogs a favor  
by taking them out for a walk  
and walk very fast  
and pull at the leash  
so that the dog gets no chance to smell a hydrant  
or a tree  
or another dog  
I hate them.

567

"People  
who have dogs  
French poodles  
wise and sapient dogs  
and clip them fore and aft  
so that they look  
and feel  
like goddam fools  
I hate them.

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568 "Who the hell are they to make dogs foolish"

"People

Who have dogs

Pomeranians

Pekingeses (except one)

Chilhuahuas;

Who carry dogs like muffs

who train dogs to carry packages in their teeth  
put sweaters on them

bows on them

polish on their toe-nails (they do so help me.)

569 "I would like to plant them in Central Park  
in a long row  
and introduce a lot of dogs to them.

"By Robert Paul Smith."

Do you see anything filthy in the matter I have read?

A. No, I see nothing filthy. It is a sort of a doggerel and it is perhaps poor taste and it is silly. I see nothing in that that would corrupt morals or that is indecent. Apparently somebody who doesn't appreciate dogs and is writing his feelings. I see no excuse for it; it is one of those silly doggerels.

570 Q. But you think it is perfectly proper to refer to the habits of dogs as referred to here? A. It is not obscene, it is poor taste.

Q. I didn't ask you whether it is poor taste, I asked you whether it is filthy. A. No, it is not.

Q. It is not filthy? A. No.

Mr. Cargill: Doctor, what would be your basis for saying that that was not filth?

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The Witness: The fact that it is a very commonplace thing and something that we do every day, those of us who own dogs, and it is obviously the recitation of a crank, and there really is no filthy language in that, no filthy language expressed by implication. You know what he means by the habits of a dog, but there is nothing directly expressed there. It is all by suggestion.

571

*By Mr. Hassell:*

Q. Do you contend, Doctor, that you can't convey filth or indecency by suggestion? A. Yes, you can, but I contend that what is conveyed here is not filthy.

572

Q. That subject is not filthy? A. No, it is not.

Q. I wonder what you would think if you were planted as suggested in that article for the use of dogs? A. Well, that is probably what happens when we are possibly in a burying ground and the dogs run over the burying place. It is a silly article.

Q. You probably would think it was filthy if something like that would happen to you, wouldn't you? A. I wouldn't know anything about it.

Q. Page 146, the advertisement of Eskey cards, Eskey Buy Products. You say there is nothing lewd, lascivious, obscene, or indecent in the pictures in this advertisement?

573

A. I do.

Q. The central figure, or picture, in this advertisement?

A. Yes.

Q. Appears to be clothed, does it not, solely and entirely by there having been dropped over her back— A. That is right.

Q. —or buttocks and thighs a very transparent hat of

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574 some sort, or piece of clothing, is that right? A. That is correct.

Q. You say there is nothing indecent in that? A. No, not in my opinion.

Q. On page 148, the cartoon at the bottom of the page showing a perfume counter and a girl behind the counter, apparently a sales girl, and placard or card on the counter reading: "Burning Desire." And nearby another placard or card reading: "Baby's Breath." And the language underneath: "I think, Miss Hill," from the floor manager or floorwalker who is on the opposite side of the counter, "it might be advisable to display those a little farther apart."

575 The floorwalker or manager is an elderly baldheaded man, grey or white haired.

What is the inference that you got from that cartoon?

A. Well, the inference I got from that cartoon is that it is a play on the words that are used for perfumes, and this happens to be "Burning Desire" and "Baby's Breath."

Q. Why should they be possibly a little farther apart?

A. Well, I suppose that implies that burning desire might lead to something and babies might result from it. If you want to stretch your imagination that far. It is a silly, innocuous thing.

576 Q. You think you would have to stretch your imagination at a great distance to arrive at that? A. Not very far at that.

Q. And there is nothing indecent in that cartoon? A. I still think it is not indecent. I think it is bad taste.

Q. Would you say it is vulgar? A. No.

Q. Filthy? A. No, nor lascivious nor lewd.

Q. Coming to the August, 1943, issue, page 10: "The Sound and the Fury," and in it "Considered Opinion," in the first column:



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"In your May issue (this year, too!), page 93, article entitled Broadway for the Boys, it is said 20 per cent don't, 20 per cent do, and 60 per cent might. While in no way representing the opinion of the Navy Department, it is the considered opinion of this patrol squadron that 20 per cent don't, 20 per cent do, and 60 per cent don't get the opportunity. Now, you guess which category we fall in! The Boys of VP-73."

577

Doctor, do you think the writer of that missive reproduced in the pages of this publication got a different idea of the text of the cartoon in the May issue which we adverted to awhile ago, the picture "Broadway for the Boys," than that which you expressed? A. I think I finally expressed or said that we agreed that it referred to sex, didn't we?

578

Q. I thought you said that you might. A. I thought at first that we agreed to it, and I accepted the fact that it might refer to sex, and I now accept the fact that this writer may think that that refers to sex.

Q. And even if that picture in the May issue did refer to sex, as indicated by this considered opinion, you don't think the picture and text in the May issue, from this considered opinion, is indecent, vulgar, filthy, obscene, lewd, or lascivious? A. I do not.

Q. Page 30, "Many Wives Too Many." The article, "Showing some of the pitfalls to that sporting but foolhardy professor who advocates plural marriage in England." By David Emory. Under the word "article" which is directly under the name of the author appears an RX. Do you know what that means? A. That is the abbreviation that is seen on all prescriptions. It is from the Latin *recipe*, meaning take thou, and it is a medical term which is on every prescription that a doctor writes. It means take thou the following.

579

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580

Q. Do you know what it means in *Esquire*? A. As a matter of fact, I never noticed it until this moment.

Q. In the March issue, page 6, the meaning of the symbol is set forth as it appears in *Esquire*, in the first paragraph.

A. Yes, I have seen that.

Q. That little symbol— A. Yes, *recipe*.

Q. "That little symbol by which we have for the last couple of years designated those of our editorial dishes which the chef couldn't bear to think of your passing up."

Now, coming back to the article on page 30 of the August issue, "Many Wives Too Many," I believe you stated that you had read this entire article? A. Yes, I have.

581

Q. Column two, the top of the column, page 30, it says: "In figuring out a schedule for a six wife batting order—which is something that should be done before it's too late—the team probably would go on a weekly timetable about like this:

"Amaryllis, the wife to go out to dinner with—Four times a week. Unless Amaryllis knows the places that have made arrangements with the Black Market and unless Dr. Joad is lush with shillings, she can count on one of the four sessions being at a fish and chip coop where she will have to perch her fanny on a peg or stool. She will have to try to turn on her charm where there are no soft, flattering lights.

582

A great risk in one of those places is that Amaryllis may see in them a soldier, sailor, marine or shipbuilder who looks like he would be good to go out with after going out to dinner. That would leave Dr. Joad with the check for a souvenir.

"Priscilla, the wife to go to church with—Twice a week. Sunday and prayer meeting night. Every time the parson referred to the seventh commandment, Priscilla probably would nudge her gentleman friend and whisper: 'What are

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you, a man or a louse: letting him make that crack at us?"

Do you think there is anything indecent in those paragraphs I have read, Doctor? A. No.

583

Q. On page 31, the first three paragraphs:

"Rosamund—The Wife to make love to. Something seems to indicate that when the roster includes five other wives, Rosamund will have plenty of time for keeping up with the latest books and movies. It is chivalrous, however, of Dr. Joad, who was born in 1891, to have the assortment include a wife for loving. This can be on a high spiritual plane if both of the loving couple get in that mood at the same time.

"Experience of many who have run some test heats on the six-wife idea is that each woman is apt to get the notion she is the wife to make love to. The cook stove wife may consider as part of the deal, her loving six-time papa giving her at least an adoring pat on the sunny south as she's bending over the cookstove and letting her pores drip onto the skillet. The game-playing wife, when gazing at a map of the Lake district in deep study and thinking of the jolly times Coleridge, Southey and Wordsworth spent in that territory, might get in the frame of mind for a little loving herself.

584

"In fact about the only wife of the stable who might not rate herself as a competitor of the wife-to-be-made-love-to possibly would be the wife-to-go-out-to-dinner-with. That woman would be no dummy in calling her shots on the menu and elsewhere. When it came time for the oversexed spouse to get around to his loving assignment, the feeding female might also have other arrangements in mind, and out of the entire sextette she might be the one least inclined to cause any loving trouble. As long as the six-timing boy chum would show up in time for her to tuck her bib up, she would be easy to get along with."

585

Does that language convey any indecency, obscenity, las-

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civiousness to your mind, Doctor? A. No, it does not. The article as a whole must be considered and not parts of it, and it is a satire on too many wives, and, in my mind, it is not lascivious, lewd, or obscene, neither do I think it is a very elevating article. I think it is a common article.

Q. But this article is prescribed by the editors and publishers of Esquire. Do you think the purport or intent, or purpose or moral to be drawn from the article is that we shouldn't have polygamy in the United States? A. I think so, absolutely.

587

Q. You think there isn't any necessity for any such propaganda? A. No, I really don't.

Q. You wouldn't think that this article, from start to finish, was written with the idea of permitting the reader, the salacious inclined reader of this publication to make excursions into the idea of polygamy? A. No, I don't think it was printed for that. It is somewhat entertaining, and it is the type of literature that a great percentage of the population likes, and it is entertaining to some, to a great many, I suppose, even though it doesn't appeal to us.

Q. Was it found entertaining by any of the 40 people you submitted it to? A. As a matter of fact, it was; it interested two people very much.

588

Q. What were their ages and sex? A. They were married people.

Q. Married males or married women? A. A married man and his wife.

Q. Now, referring to the Varga girl picture on page 38, would you say that the breast and thighs of this model are over-emphasized? A. I would not.

Q. What do you think should be drawn by the fact that one of the shoulder straps of her most abbreviated costume has come loose and is being held in her hand, hanging as

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though she was beginning to drop it? A. I think that very frequently women on the beach remove their shoulder straps so as to get the suntan all over, so that when they put on an evening gown they will have an even tan and the marks of the straps will not show. That was the implication I got from that.

589

Q. Regarding that gesture of the model in connection with the smile, or whatever you may call it, on the face of the model, would you say there is any connection there? A. No, none whatsoever.

Q. You don't think she is teasing? A. I didn't get that impression.

Q. Page 73, the picture "Mood For Red Hair." Doctor, did you note that apparently this figure, and this is supposed to be a color photograph, the model apparently has no clothing on whatsoever, but there is loosely thrown across her breast and one arm—the breast and the body—a transparent veil and a piece of some material across her midsection? A. I don't know how you can assume that that woman has no clothing on underneath those drapes.

590

Q. Do you see any? A. No, but the fact that the drapes are thick and cover her—she could have on a brassiere, and she could have on a covering over the midsection and not show with those drapes, and even if she doesn't have anything on underneath, those drapes cover every possible part of the body that could be criticized, and that is an artistic picture, photograph, really, that I can't see how it could be objected to.

591

Q. You don't think that the manner in which this model is draped was adopted to facilitate the mental processes of the purchaser of this magazine in removing the drapes entirely and regarding her without any drapes? A. I honestly don't. I hadn't thought of that. I suppose you could make

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592

that interpretation, but I hadn't made that interpretation. I suppose you could mentally undress any woman.

Q. Would you say that this model is in a reclining posture? A. I think she is in a reclining posture.

Q. Page 89, this is the "Paste Your Face Here" picture. This shows a phony sea, or background, where the girl is posed with a sailor's white hat on and a blue brassiere and very scant panties, seated over the sailor's shoulders, with his head between her legs.

593

Mr. Bromley: Now, when you say brassiere, you mean the top piece of her bathing suit, don't you?

Mr. Hassell: I wouldn't call that a bathing suit.

Mr. Bromley: You wouldn't?

Mr. Hassell: No.

Mr. Bromley: Well, that is what it is.

Mr. Hassell: Well, I am glad to have counsel's statement on that. It certainly doesn't appear to be a bathing suit to me. There is no water in that background in this picture. As far as the picture is concerned, the sea might be a thousand miles away.

The Witness: Well, that is not true on this one here. It is a deep sea, and ocean waves are represented behind this.

594

*By Mr. Hassell:*

Q. Well, you may call that ocean waves, but it don't look like ocean waves to me, but you think that pose of a girl seated astride the shoulders of a sailor, designed for some sailor to paste his picture there, is not lascivious and one would not get a lascivious enjoyment from the pose? A. No, I don't get that impression.



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Q. Well, it says, "Paste Your Face Here." A. That is right. 595

Q. That means any of the seven hundred thousand people who purchase this magazine, doesn't it? A. That is right. It doesn't have to be limited to those. I assume anybody could.

Q. Why would anyone want to paste his picture there? A. Well, as more or less of a joke, I suppose.

Q. You say there is nothing indecent, lewd, lascivious, or obscene in that— A. I do.

Q. —picture? A. I do.

Q. Now, on page 90, the cartoon, "She Came Directly From The Wedding—Boy! That's Patriotism." 596

Doctor, do you think there is any indication or any design in showing that cartoon that this young lady who has gone directly to the war factory in her wedding gown is passing up great pleasure that she might enjoy on her honeymoon evening? A. Well, I gather that she came directly from the wedding to her work. For what reason, I don't know.

Q. Your imagination wouldn't follow you any farther? A. Yes, that she left her bridegroom and came to work.

Q. But, "She Came Directly From The Wedding—Boy! That's Patriotism." A. Well, I think that she is not wasting any time. She is pre-occupied with her war effort. She is willing to sacrifice any personal interest. 597

Q. You don't seriously contend that that is the fact to be drawn from this cartoon, do you, Doctor? A. Yes, I do. I see no reason why it should not be in these times. After all, this magazine portrays the times and the present mores.

Q. You have heard of such a thing happening? A. No.

Q. You would be amazed if you ever heard it happen? A. I would think it was an extreme situation.

Q. Page 105, the cartoon at the lower right-hand corner

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of that page, showing south sea damsels and what appears to be a male figure in rather loose shorts, clinging to what looks like might be a coconut palm, and another male figure in a sailor suit with a paddle and some sort of a canoe making his way to shore and the statement: "Thank God—Help at Last."

What sort of help do you think this forlorn male figure on shore is to get from the man in his boat? A. I think he is to be rescued from this desert island, from this group of natives who are standing in the back. They are apparently female natives.

599

Q. Do you get any sex connotation from that? A. One could get a sex connotation from that, yes, indeed.

Q. You think it is entirely decent, and not lewd and lascivious? A. Well, I think it is not lewd or indecent. I think it is commonplace.

600

Q. Page 110, the cartoon at the bottom, center of the page, with the legend underneath, "That's Miss Blimpton, our special nurse for low blood pressure patients!" Note the eyes of the male person in the lower right-hand corner of that picture as he glances around back at the female figure. Note the male figure in the upper background with the walrus mustache who has just lost his hat, or his hat is flying up in the air. Note the whispering comments of the intern, or attendant standing near the elevator talking to the doctor, I presume, who has a small satchel in his hand, and note the size of the breasts in proportion to the balance of the figure of this nurse.

You say that that cartoon is not indecent? A. No: I think it is plain down-right silly. There certainly is not any indecency about it. As a matter of fact, the breasts that you think are so large I think is a nurse's bib on the front there.

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Q. A nurse's bib? A. Yes, which tends to exaggerate the breasts which, in this picture, are only vague in outline in the lower part.

601

Q. Why was the name Blimpton chosen? A. I haven't the slightest idea.

Q. To donote the size of the breasts, would you say, Doctor? A. I hadn't thought of that before.

Q. You hadn't? A. No, I hadn't.

Q. Well, how about "Our special nurse for low blood pressure patients"? A. Well, that is a very common expression when an attractive nurse goes along, I think. I think it is just a silly joke. I see nothing indecent about that, or obscene.

602

Q. In other words, her presence would give some sexual excitement or stimulation to the patient requiring a boost in blood pressure? A. One could make that interpretation, I suppose.

Q. But you don't? A. I don't.

Q. And you think it is perfectly decent? A. I think it is silly, but respectable.

Q. Page 127, here we have a cartoon or an illustration of female figures. One figure lying among pillows wearing only a yellow filmy brassiere and panties of the same material, the panties being loosely put on, and showing very little between the legs, and under this illustration appears these words: "Hew to the Line, Bertha, Let the Skirts Fall Where They May."

603

Do you think this picture or illustration is intended for the male readers of this magazine, Doctor? A. I think it is intended for both. As I understand, this caters to the man and also to the woman, and it is in keeping with the mores of the times. They are painting stockings on the legs and I think that is a bathing costume that the girl has on,



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604 I think it is. I cannot see how there could be any improper exposure, even in that position. There certainly is none portrayed here.

Q. How can you call it a bathing costume when there appears to be a fence in the background with a house in the distance and some greenery around? A. Well, the costume is a bathing costume, I am sure, because it looks like many bathing costumes that I have seen.

Q. Have you ever seen any brassieres and panties— A. Never decorated like that.

Q. You never saw any like that? A. No.

605 Q. There might be, though? A. There might be, yes.

Q. You think the women, if this is intended for women, would get any exhilaration from that cartoon and the position of the young woman lying down on the ground with one leg up in the air? A. No.

Q. It would be the man who would benefit by that, Doctor? A. Possibly.

Q. You say you see nothing indecent, vulgar, lewd, or lascivious about that? A. I do not.

Q. Did you read the article "Offensive On the Home Front"? A. What page, please?

606 Q. Beginning on page 56, with material on page 144, in the third column. A. Was that specified or cited material?

Q. The material in the third column on page 144. A. Oh, yes.

Q. You did not read this entire article, did you, Doctor? A. I don't recall. Yes, I think I did. I recall it now with the specified material, or the marked material, on the third column, 144.

Q. You don't recall what the article is about? A. I don't recall it in detail.

Q. Well, beginning down there in the third column:

*Kenneth J. Tillotson—for Respondent—Cross.*

"Women in his walk of life didn't hit their men, nor did they hit their women. Once he had slapped a prostitute in Bordeaux who had persisted in keeping his hat, but that didn't count. He was amazed to find himself slapping his second woman.

607

"Dorothy began to cry loudly and headed out of the room. Dizzy and with the taste of blood in his mouth, he noticed how large the uniform made her behind look."

Do you think there is nothing indecent in that language?

A. I do not.

Q. That is perfectly proper to refer to that portion of a woman's anatomy? A. I think it is. It is common, but I think it is not indecent, certainly. It may not be in good taste.

608

Q. Now, coming to the September issue, page 10, do you think the "conservative suggestion", Doctor, on this page reflects or is intended to reflect the reaction as is obtained by readers of this magazine? A. I don't. I think that is the exceptional case. He signs it "The height of expectation". I expect that would be, and it is my opinion, that that is from an extravert; or might even be a pervert.

Q. Why do you think the editors of this publication should pick that out of probably thousands of letters they receive for publication? A. I think he does it to show both extremes. I think this is one that shows that: There are very few of those letters that show that sort of thing and there are many letters received.

609

Q. But you have no definite, factual information as to why this letter was selected? A. Yes, to show the extremes.

Q. You have that? A. I have that information from Mr. Gingrich.

Q. You have that from Mr. Gingrich? A. Yes.

Q. He claims that this is to show that they have readers

*Kenneth J. Tillotson—for Respondent—Cross.*

610

who want these Vargas entirely in the nude? A. I wouldn't say that. I wouldn't attempt to testify for Mr. Gingrich. I simply quote what he has told me, that he introduced this letter to show the extremes in letters. He will probably testify for himself.

Q. Now, page 38 we have another Varga girl picture entitled "Military Secrets", and this one is clad in, I guess you would call them sandals and the garment which covers the small part of her back comes down a little way on her thighs. That does not obstruct the view of her figure in the least, does it, Doctor? A. It displays her figure.

611

Q. Completely? A. I would say.

Q. In this picture what would you say that those marks on the side of this model purport to show or represent? Her ribs? A. No, I think those are the folds of the muscles. They are not rightly placed for intercostal spaces which show that these are not drawn up from real life, but from dummies. Anatomically those folds are incorrect. That is the fold you refer to on the side of the thorax.

Q. Doctor, would you say that this model as shown in this picture in life-like print is practically unclothed so far as garment is concerned? A. Yes.

612

Q. The expression on the model's face, the thing that appears there on her hand labelled "Diary" coupled with "Military Secrets", taking all of those things into consideration, do you consider this picture to be indecent, vulgar, obscene, lewd, or lascivious? A. I do not.

Q. What would you think that the military secrets has reference to in connection with the diary in her hand? A. Probably a date that she has.

Q. But it says secrets. A. The date is a secret to her, probably.

Q. Now, the verse under there:



*Kenneth J. Tillotson—for Respondent—Cross.*

"Now, no one can peek

At this Book of the Weak—

In wartime I have to be cagey,

That boy in the Army

Would certainly bar me

If he knew I dated a J. G.,

That boy in the Navy

Whose hair is so wavy

Would tear it right out at the roots

If he found that I

And a Leatherneck Guy

Were now in romantic cahoots!"

613

614

So, would you say the secrets might refer to dates with a boy in the Army and one in the Navy? A. That is right.

Q. And one in the Marines? A. That is right.

Q. With this expression in connection with the expression on her face and with the very scanty costume, that does not convey to you any idea of indecency? A. No.

Q. On page 43, I believe you said on direct that this cartoon with the legend underneath "Sold American" brought to your mind the chant of the tobacco auctioneer.

A. Well, it brought to my mind the idea of that, I thought, because there was an American boy here with a cigarette in his mouth and the old sheik is saying "Sold American". I thought it was a play on that "Sold American" that comes on the Lucky Strike hour.

615

Q. What has been "Sold American", two slave girls here?

A. Possibly.

Q. They have a loose jacket on the upper parts of their bodies and apparently nothing else. Is that right? A. Well, it looks as though they had white trousers on in this picture.

*Kenneth J. Tillotson—for Respondent—Cross.*

616 Q. Yes, but I say on the upper part of the body. A. Oh, yes.

Q. What would an American soldier—apparently, there is a tank in the background and the fezzes and other costumes indicating North Africa—what would he be doing with two slave girls? A. Well, he might be going out with them for a good time.

Q. He would buy two slave girls to go out for a good time? A. I don't think he would buy them; he might rent them.

617 Q. The legend is "Sold American". A. That is why I think it is a joke. The girls are being presented to the group of people and the American boy is holding up the money and has a cigarette in his mouth. I don't think there is any question about that.

Q. He is buying the girls to take them out for a good time? A. He might be.

Q. You don't get any sexual connotation from that? A. I don't.

Q. You don't get anything indecent from that? A. I don't. It happens too often. It is commonplace and poor taste.

618 Q. Now, coming to the cartoon on page 65, this picture is of a man dressed in a red checked apron, half-way out of the back door of the house, and a red-headed young lady dressed in rather tight fitting slacks and a tight fitting garment around the upper part of her body, and under the cartoon this legend: "Come back later, sweet—my wife hasn't left for the factory yet."

Do you say that this cartoon has no indecent connotation? A. It has not. It is a satirical cartoon depicting the ten-

*Kenneth J. Tillotson—for Respondent—Cross.*

dency of the times when many women are working and it puts the man in the kitchen.

619

That is done on the stage and in various ways and it is the reverse of the iceman coming years ago. It is silly. It doesn't connote any obscenity. It is just a joke.

Q. This girl is the milkman? A. That is right, and the housewife has gone to the factory and the man of the house is doing the housewife's work. It is a cartoon on the mores of the times.

Q. And the attitude of the individual leaning out of the kitchen door and the expression on his face, coupled with the words in the legend, don't convey to you the idea that there is going to be any off-side shenanigans between this individual and the young lady? A. No, I think it is just a joke. I can't take it as literally as that.

620

Q. And the cartoon on page 66 at the top of the page, showing a young lady seated on a young man's lap, lolling over him with her arms around his neck and his arms folded around her, in very close embrace, apparently kissing, and the conversation between the charwomen who come upon this scene is reported in the legend underneath: "It's the only time that her and her young man have for courting—they both work nights in a war plant."

That is apparently the explanation of the woman with the feather duster in her hand to the charwoman who has an amazed, blank, open-mouthed stare on her face.

621

You contend that this cartoon is not indecent and has no indecent connotations? A. In my opinion it depicts the times, as the description underneath indicates. It is a take-off, it is a joke.

Q. Page 84, the cartoon showing a young sailor seated on

*Kenneth J. Tillofson—for Respondent—Cross.*

622

a couch and a young girl seated beside him in a red dress, she with her arms around his neck and he with his arms around her, and they being engaged in what might be described as a wet kiss—the young lady's mouth appears to be open—the old folks peeping around the door, and it says: 'Every night he tells her he is sailing tomorrow.'

623

Would you say that this pose and this cartoon and the language underneath, especially the kiss, has nothing of indecency in it? A. I would say that it is nothing indecent and is in keeping with the mores. This is a sailor and it is a silly joke. One has to have a far-fetched imagination to paint anything indecent into such a commonplace thing as that.

Q. Page 86, Doctor, "Goldbricking with Esquire", at the bottom of the first column:

"A sergeant was home on emergency furlough to be with his wife who was expecting a baby. One morning on his way to her room, he passed the baby's ward and stopped to have a look at the recently arrived children; in one corner he noticed two of them in a serious conversation. He reports it went something like this:

"First: 'I'm a girl. What are you?'"

"Second: 'I'm a boy.'"

624

"First: 'You look like a girl to me.'"

"Second: 'Well, I'm a boy. Wait until the nurse leaves and I'll show you.'"

"The nurse did leave and the boy lifted the covers: 'See blue booties.'"

Is it your testimony, Doctor, that there is nothing indecent in that alleged joke? A. No, it might have a double meaning. Blue booties for boys and pink for girls.

Of course, that is intended to take away the double mean-

*Kenneth J. Tillotson—for Respondent—Cross.*

ing, which, in spite of that, is probably there in your mind which would mean that they exposed their sex organs.

625

Q. Don't you think, Doctor, as a matter of fact, that is the only reason that alleged joke was published? A. So what? What if it was?

Q. If it was? A. So what?

Q. That would not be indecent? A. No, it would not.

Q. I see. On the other page, the third column, at the bottom:

"She: 'Would you like to see where I was operated on for appendicitis?'"

"He: 'No—I hate hospitals.'"

626

A. That is a silly joke. Suppose she did show where she was operated on for appendicitis. If it was a McBurney scar she would not be displaying anything. If it was a right rectus scar it would be up near the umbilicus.

Q. Do you think this was put in this man's magazine for any other purpose than to convey the idea that this fellow was a moron and he didn't know when he had an opportunity to see something? A. I think like most of these jokes it was a little humor to the boys and older than the boys enjoy it. It is silly, and innocuous and silly to think of it in the way it is presented here.

Q. I am glad to have your reaction. A. I have very strong feelings about this.

627

Q. Apparently so. Page 102, this cartoon showing a man in a ragged white shirt, with staring eyes and mouth wide opened and fingers spread apart, and the girl in a brassiere and panties, lying on what appears to be the beach, with her legs cocked up, underneath which appears: "Ain't it a damn shame? Plenty of water on this island, plenty of food, and now I get hallucinations!"

*Kenneth J. Tillotson—for Respondent—Cross.*

628

Do you get any indecent, lewd, or lascivious connotations from that cartoon, Doctor? A. I don't. As a matter of fact, there is a double meaning there and if there is a double meaning there it is an hallucination. Apparently there is a young lady lying on the beach.

Chairman Myers: We will adjourn at this point. Would it be convenient for counsel on both sides to start at 9:30 instead of 10 tomorrow morning?

Mr. Bromley: Yes, Mr. Chairman.

629

Chairman Myers: If that is agreeable, we will adjourn until 9:30 tomorrow morning.

(Whereupon, at 5 o'clock-p. m. the hearing was adjourned until 9:30 o'clock a. m., Thursday, October 21, 1943.)

630



# HEARING OF OCTOBER 21, 1943.

## PROCEEDINGS RESUMED.

631

Chairman Myers: We are ready to proceed.

KENNETH J. TILLOTSON, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

*Cross Examination by Mr. Hassell (Continued):*

632

Q. Doctor, let's take up the October, 1943, issue of Esquire. On page 10 under "The Sound and the Fury", the sub-title "The case of the classy chassis", in the latter half of the last paragraph the writer says:

"Though my liking for the Varga wenches is supreme, I would not replace the chassis on page 10 for a Varga dame. It is too bad you could not provide a larger of such photo so that we, who appreciate shapely forms, could pin up. A spot has been reserved on my wall to deposit such a dish."

Do you think that is an average and natural reaction to the Varga pictures as they appear in Esquire in these issues? A. Yes, I think it is. I think most of the Varga girls are depicted for that purpose, for pin-ups.

633

Q. And aside from any sexual gratification this writer and similar writers might get from such pictures, what other gratification— A. I don't concede that they get sexual gratification. I consider that they might, but I think we can't necessarily say that. I think they like beautiful women

*Kenneth J. Tillotson—for Respondent—Cross.*

634 and these are portrayed as the type of American beauties of the times.

Q. Why does a man like beautiful women? A. I think for the same reason you and I do, probably.

Q. That is really a foolish question? A. It is not a foolish question. It is the sex instinct in us.

Q. And it is a fact that the normal virile adult male likes beautiful curves and the curves of the body, and the more he can see of them the better he likes it? A. The more he can see of the curves?

Q. Yes. A. Perhaps, yes.

635 Q. Speaking of the curves and the erogenous zones, you have indicated in your testimony heretofore that there were two erogenous zones. I assume you have reference to erogenous to the male through his vision? A. That is right.

Q. When he looks at a woman. These two zones are the pubic area and the breasts. Are there any others? A. Well, the feet and the hair and everything might stimulate sex thoughts, but that is not the same as the erogenous zones. The mouth, of course, is an erogenous zone.

Q. How about the curves of the body? A. I think they probably are part of sex and suggest sex in the female. I am not saying these Varga girls aren't sexy. I didn't give you 636 that impression, did I?

Q. You admit they are sexy? A. Yes. But I definitely say they are not lewd, lascivious, filthy or obscene, because the so-called erogenous zones which you just mentioned and the things you show in those nude photographs—I think they are obscene. I call that obscenity. That is what we have to guard against and that is the important distinction we have to make, that there is no indecent exposure.

Q. Those nude photographs— A. Those are obscene.

*Kenneth J. Tillotson—for Respondent—Cross.*

Q. Don't you recall that the females depicted in those photographs didn't have alluring figures— A. I didn't study them very carefully. 637

Q. Their breasts were pendulous, nothing beautiful about them, no beautiful features, the figures were not beautiful.

Why would you say those would be more obscene than pictures such as the Varga pictures, which are manifestly drawn to appeal to those susceptibilities in a man? A. Because the important thing is that in the Varga girl pictures there is no indecent exposure, whereas in those nude pictures, the genitals and everything else is exposed.

Q. Do you consider it to be a fact that in a great many persons indecency is disgusting? It doesn't stimulate sex. 638

A. I am not saying these would stimulate sex in everybody. I am saying that they may stimulate sex in some.

Q. You mean the nude pictures? A. We are talking about two different things. I thought we were talking about the Varga girls. These nude pictures, of course, would stimulate sex in some people. That is a variable thing.

Q. This whole subject is very variable, isn't it? A. Very variable.

Q. For instance, take you and I—you have studied these eleven issues in Esquire for ten days to two weeks, possibly the great amount of compensation you have had with respect to them in the past few days and they cause you to grow calloused to it, become disgusted with it, as with a spicy joke that is repeated once too often. Isn't that true? 639

A. I think if we have got the proper fundamentals of respectability and decency, our working with Esquire for the time suggested isn't going to in any way change those fundamental principles of decency in our attitude of what is right and wrong, and what is good for the public to have, which is after all what we are trying to determine.

*Kenneth J. Tillotson—for Respondent—Cross.*

640

Q. Aside from Esquire, would you say that it is possible for the average normal, this ideal person, that through your testimony is set up here? A. Not the ideal, the average individual.

Q. The ideal average? A. Yes.

Q. That it is quite possible that such a person might become surfeited with obscenity or salaciousness? A. I don't think the average individual is, no, indeed, I don't think so. I think the average individual, as I can see them, is quite guarded and draws the line in his own experience pretty carefully.

641

Q. As a matter of fact, his own experience and his environment and his upbringing have a great deal to do with it? A. That is right.

Q. So when you attempt to define the average or normal individual you are attempting to take off and put into one-minute package all the environments and experiences in life, not to say anything of the physical condition of the individual; you are attempting to put all that into one package? A. You would attempt to make an evaluation of it.

642

Q. But you don't think this average or normal individual you spoke of would become surfeited or calloused or grow tired of obscenity, with the constant repetition of obscenity, or filth or lasciviousness? A. I think if he were subjected, the average individual, he would very quickly become disgusted with it. I think the average individual doesn't like obscenity and filth and so forth.

Q. So if you were in business to appeal to the average individual you wouldn't give him too much, too constant filth or obscenity, would you? A. If I wanted to sell a magazine or appeal to the American public I would shy away from what I considered lewd, lasciviousness; and filthy obscenity. I don't think it goes across.

*Kenneth J. Tillotson—for Respondent—Cross.*

Q. Now, Doctor, coming back to your experiences and your training, I believe you testified that as a part of your qualifications you have gone into the sex life of a great many of your patients. A great many patients who have consulted you about others? A. That is correct.

643

Q. You have had occasion over the past 15 or 20 years to spend a great deal of time on sex, haven't you? A. That is right.

Q. Yet you think you are still in a position that you haven't grown calloused or anything of that sort? A. Well, I will answer that by telling you that I was asked by the Bishop of our Diocese to lecture to the clergymen of the Diocese of Eastern Massachusetts last winter on psychiatry, touching on matters pertaining to psychiatry, with special reference to sex adjustment, and to advise them how to give advice to families and young people about neuro-psychiatric disorders, and I gave them ten lectures and two clinics, and I gave those clergymen that course, which was very well received and appreciated. I don't think my Bishop would have asked me to do that if I had become a calloused, loathsome creature and hardened to sex.

644

Q. Don't misunderstand me, Doctor. A. I never have.

Q. I didn't mean that you were becoming loathsome. A. I know that.

Q. I said calloused— A. I think a person who is calloused to sex and those things is more or less loathsome. He is to me, and to my standards.

645

Q. Now you say those lectures were given to clergymen? A. Yes, the Episcopal clergymen of the Eastern Diocese of Massachusetts.

Q. You consider clergymen within this class of the average or standard individual? A. I certainly do. That is a higher standard, clergymen and priests.

*Kenneth J. Tillotson—for Respondent—Cross.*

646 Q. Well, let me see, now. You say higher standard, Doctor? I thought we had defined that, we had just one standard, or one average. A. What are you speaking of now, in regard to what?

Q. You are speaking of the effect that this material would have on the average person. A. I would put clergymen above the average.

Q. You wouldn't put them in this class? A. The average men?

Q. This class we are speaking of. A. I would say a little higher than the average.

647 Q. Would you submit these eleven issues of Esquire to any of those clergymen, or any clergymen? A. As a matter of fact, one of the priests who visited me recently, one of my parish priests, looked over these Vargas with this material in mind, and he expressed his opinion.

Q. I see. Now, coming to page 37 of the October issue—

Mr. Bromley: May we have, please, what that opinion was, before we leave this subject?

Mr. Hassell: I think we have too many opinions now.

Chairman Myers: Did you ask for it?

Mr. Bromley: No, he didn't ask for it.

Mr. Hassell: No.

Mr. Bromley: I thought he should have, having gone that far.

Chairman Myers: Perhaps you can take it up on rebuttal.

Mr. Hassell: I am not interested in the opinion of the clergyman. If you put a clergyman on the stand perhaps I could ask him some questions.

Mr. Bromley: I thought you kind of opened the door a crack.



*Kenneth J. Tillotson—for Respondent—Cross.*

*By Mr. Hassell:*

649

Q. The cartoon picture at the lower right-hand corner, page 37. I notice this picture is in an apparently tropic setting, there being a cabbage palm in the background.

A. I can't hear you.

Q. This picture appears in a tropic setting. There is a tropic tree and palm of some sort in the background. There is a man seated on the beach, clothed only in trousers, nothing above his waist. He has an identification tag around his neck. He very likely is a sailor or soldier. He has tattooed on the biceps of his right arm what appears to be a semi-nude figure. It looks like she has a grass skirt on but nothing above that, and the lines are drawn adjacent to the biceps so as to indicate that he is flexing his biceps so as to make the middle of this figure's anatomy move backward and forward, and a half-naked native girl is gazing at this figure.

650

Do you mean to state to the Board that this cartoon has no indecent sexual implication? A. I mean to say just that. This is a very common thing. Many marines and sailors have these tattoo things on them and this depicts surprise in the Hawaiian girl, or hula-hula girl, to see this American sailor have this model on his arm. I don't think there is any sex in it at all. I don't think the girl has that in mind, her eyes show surprise clearly at this performance.

651

Q. You don't think this was included in this issue of this magazine with the idea of giving any sex angle to the readers of the magazine? A. Well, it may be the idea of burlesque in the mind of the sailor. I don't think it is particular sexy.

Q. It is not sexy to you at all? A. No, it is not.

*Kenneth J. Tillotson—for Respondent—Cross.*

652

Q. Now, coming to page 38, the article "Wise Men Pick 'Pyknic' Girls. Scientists recommend for marriage the honest-to-God woman, built as nature intended, with more curves than brains."

653

I believe you said on direct that this article by J. George Frederick is based on some scientific or alleged scientific investigation? A. Yes. The terms are derived from the work of Kretschmer. Kretschmer tried to relate emotions and personalities with body structure and body build, and the Pyknic is a certain type, Leptosome-asthenic is another type. There are many other types. We don't need to go into that. But those are the two extreme types of body people. The Pyknic type being the short, squat type, and the Leptosome-asthenic the tall, not athletic type, but rather thin, tall type, and as depicted on this page, page 37, showing the tall woman beside the shorter man.

Q. Doctor, you wouldn't classify Esquire as a scientific magazine? A. No, indeed.

Q. How many readers of Esquire, or what proportion of the readers of Esquire, do you think know about the scientific Pyknic? A. I wouldn't know, I haven't any idea.

654

Q. Would you think that the average reader of Esquire would have this reaction, a Pyknic is something to play with, a good time, or entertainment? A. That is they think of a Pyknic as a picnic?

Q. Yes. A. That is right. I think the average would think that, but if they read the article it would explain it to them.

Q. You think this article would explain it? A. Yes, I do.

Q. Now let us read a little of this article:

"Want your love life, your marriage, to be one long,

*Kenneth J. Tillotson—for Respondent—Cross.*

joyous, satisfied picnic, with the least amount of upset and snarl in it? Then pick yourself always a 'Pyknic' type of girl, never a 'Leptosome-asthenic' type.

655

"Don't blame the pun on me, but on the scientists who invented the word Pyknic to describe the kind of woman who it is widely agreed has so much more desirable a body and disposition, so much better adaptation to love, marriage, motherhood.

"Why do you need to be told all this? "Because the Pyknic woman doesn't get the breaks, as a rule, in most beauty contests, model selections, and other preferments based solely on idealized eye appeal, even though what she's got to offer is plenty! Statistics show that in reality she does get the breaks when it comes to marriage, for which she is superbly fitted. Men who follow their basic instincts usually pick her."

656

Now do you think that is a correct statement, Doctor, "Men who follow their basic instincts usually pick her"?  
A. No, I don't think that is necessarily true.

Q. If that were true then the question is why should anybody read this, take up time to read this stuff? A. Well, I think it is in the nature of entertainment, and it is informative in referring to a really scientific background. The article, as is expressed in the paragraphs you read, is a play on the word picnic, and is a pun, and I think most of us would agree that pun is the lowest form of humor, but it is there.

657

Q. Continuing with the article:

"But many men wonder, or waver and take a chance, and thus take on a considerable extra load of difficulty."

Over in the next column we have a paragraph numbered one, descriptive of the Pyknic type, as follows:

"Tending to be short and stocky, well-built, fairly well

*Kenneth J. Tilloison—for Respondent—Cross.*

658 rounded, short neck, more or less round head, somewhat ruddy complexion, graceful wrists, bone frame that is not heavy; and there is a slight tendency to stoutness after twenty. The nose is never thin, bony or aquiline. Her pelvic regions are markedly well developed, with definite rear curves.

659 "The Pyknic type of woman is always very markedly and decidedly feminine; soft, jolly, yielding, loving, peaceful, sunny, good-natured temperament, adaptable, loyal, forgiving, and healthy, extravert and particularly competent in sex and child-birth and child care. She is not particularly a mental type, it is true; but then she is not given to neurosis, intransigence, self-seeking ambition, obsessions. On the contrary, she is much given to seeking her happiness in catering to those she loves. She is humanistic, sympathetic, warm, social, but it is true, inclined to be rather easy-going, vain and careless. Love of comfort is strong; she knows how to relax, she likes food and people." A. You know, that is undoubtedly taken from Kretschmer's book. It sounds like the English translation, very much. That is really a scientific paragraph you have just read.

Q. Would it happen that you had ever read any so-called horoscopes? A. I have heard them read.

660 Q. You don't see any similarity in this language to the matter described— A. As a matter of fact, a scientist by the name of Jung in Zurich has accused Kretschmer of just that sort of thing. He says it is a horoscopic view of human make-up and personality.

Q. I am glad to hear that. I have had to read a great many of those things and this whole article sounds very much like it. A. You understand, I didn't say I accepted this scientific theory, but it is a valid one, it is one of many.

*Kenneth J. Tillotson—for Respondent—Cross.*

Q. Coming down further in this article to the lower half of the fourth column on page 38:

661

"Pyknic types (about 60 per cent of all women).

"'Short-slender' with busts 30-34 (5 per cent of all women).

"'Short-normal', with busts 34-40 (10 per cent of all women).

"'Medium-normal', with busts 34-40 (25 per cent of all women).

"'Short-heavy', with busts 36-46 (6 per cent of all women).

"'Medium-heavy', with busts 38-46 (14 per cent of all women).

662

"Average height, 5 foot, 3 inches; average weight, 128 at 25 years of age; average neck, 15.27; average waist 29.15; average hips, 38.62; average ankle, 9.25."

Then he gives the measurements of the leptosome-asthenic types, and in each of those he gives the measurements of the busts and at the bottom the hips. I guess the idea is that before a person picks his company he should apply the tape measure to her. Is that the idea? A. I didn't get that. This is a part of the article showing the various anthropological variances in the human being. Those of us who have been interested in Kretschmer know how much emphasis he has put on anthropology in trying to determine these body structures and body builds, and I concluded that since this article referred to that, this was a reference to measurements of the parts of the body that would naturally be measured in making anthropometric comparisons.

663

Q. As far as its being useful to readers of Esquire, do you think those details are of value? A. I think it might be of interest to us in estimating whether the breasts we have been talking about are over-emphasized or not.

*Kenneth J. Tillotson—for Respondent—Cross.*

664

Q. How about the average reader of *Esquire*? A. I think the average reader wouldn't pay much attention to this.

Q. Further down in that paragraph in that column—the next paragraph—

"You can see how many of the measurements of the Pyknic type 'suffer' in contrast with standard eye-minded ideas about 'beauty'."

665

He refers to the Venus de Milo, "the truly beautiful woman, who is a Pyknic woman, (as practically all Greek women were and are), with the pelvic development that meets the great test of the ages for womanliness." A. You know what that means in scientific terms, don't you?

Q. Do you think, Doctor, that this writer is putting too much emphasis upon the bust development and pelvic development of women? A. No, I do not.

Q. And going further down, at the bottom of that column, the article says:

"The Pyknic woman scores high here not only because she is far and away the most generally satisfactory love partner, wife and mother, but because she blends well with all types." A. That means she is an extravert instead of an introvert.

666

Q. At the bottom of the third column, page 39:

"The Pyknic type of womanly beauty, frankly, is Mother Nature's masterpiece of good, hearty practicality and adaptation to woman's earthly chores, as well as man's comfort and delight. She is a 'natural', not a wraith intended for some other world or a soul that doesn't look at home here below! The Pyknic woman can take it and give it."

Do you still say that you don't find any undue emphasis upon the portions of a woman's anatomy that the average male reader of *Esquire* would get a sexual kick from in this article? A. I do not see any undue emphasis.



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Chairman Myers: In the second column of page 39 they refer to Pyknic men.

667

The Witness: Oh, yes, this isn't just for women. Kretschmer's theory is applied to both sexes.

Mr. Hassell: I think if you will read the article in its entirety you will find that very little space in proportion is devoted to men. We are discussing women.

Chairman Myers: You know, man is the weaker vessel all the way through.

Mr. Hassell: The female is played up.

*By Mr. Hassell:*

668

Q. Now, the Varga picture at pages 43-44. Doctor, this is a reclining posture, isn't it? A. Yes.

Q. And the covering on this model is quite flimsy, isn't it? A. Yes.

Q. Are these the ribs we see through this garment? A. I think we see the interspaces.

Q. But you see the umbilicus there, don't you? A. I see the depression.

Q. Do you see the nipple on the right breast? A. I see a point there. You can't see the nipple. I suppose the nipple is underneath that. It is pointed, on the right, in profile.

669

Q. Do you still say that there is nothing indecent in this posed picture as shown here? A. I do.

Q. Page 49, we come back to the iceman-milkman motif, in a full page cartoon showing a very hefty red-headed guy or man with—I don't know what you would call that smile on his face—certain of ultra-ultra satisfaction as though he was about to consume a choice dish. He has

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670 his arm around this lady, who is seated in his lap, and the lady's breasts are, I should say—or would you say, Doctor,—rather over-sized for her waist measurements?

Would you accept that? A. They are prominent.

Q. Very prominent. And there is a cocktail table or a coffee table with a cocktail shaker and apparently two cocktail glasses on the table.

671 The man who is holding the woman in his lap has on overalls, apparently. He looks like he might be a workman. The husband—I assume he is the husband—with the very glaring eye and this stare at the sight he sees, comes in dressed in topcoat, cane, spats and hat, and we have this legend at the bottom of this cartoon:

"Hello, dear—this is the gentleman who sells us our fuel oil."

Do you say, Doctor, that there are no indecent sex implications in this cartoon? A. I say there are no indecent sex implications. I think it has sex implications, and I think it is coarse and commonplace and rather cheap. I don't personally like the cartoon.

672 Q. In a situation of that sort what would be the natural assumption of this irate husband if he came in and found his wife in this position after having partaken of cocktails with the fuel oil man? A. I suppose he would be very indignant.

Q. Why? A. I think anybody would be indignant if that is his wife, as you assume, and if she had her arm around the fuel oil man in this position—I think he would be indignant. It indicates they are making love to each other.

Q. The husband shows indignation on his face, doesn't he? A. I can't tell whether that is a smile or a leer or surprise; perhaps it is all of them.

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Q. It is a fact, isn't it, Doctor, that some men have been killed for less of an offense than this fuel oil man is committing? A. I have heard of such things.

673

Chairman Myers: They call that the unwritten law.

*By Mr. Hassell:*

Q. You find nothing indecent, lascivious, or lewd in that picture? A. I do not. I think it is coarse and commonplace.

Q. Page 56—no. 128. A. It begins on page 56.

674

Q. And goes to 128, the article "Portrait Above the Fireplace." I believe you described this story in your direct examination. A. Yes, sir.

Q. Rather accurately, as I recall, except that you didn't read the language of the friend of the hero in the story who imparted to the hero the information that the picture he had idolized was the picture of the madame of a bawdy house. A. I don't know as I used that expression, but I thought I conveyed that idea.

Q. In the fourth column, page 128, it reads:

"Tressant hesitated, but he went on. Of course, you don't know, John. I hate to think of anyone ever laughing at you. But that is a portrait of Mabel Haynes. She was the madame of the highest class house in the old district."

675

Doctor, do you say that that story does not have any filthy or indecent implications? A. I do.

Q. Do you think it would be perfectly proper as a subject of conversation between two male friends for the one to indicate to the other that a woman whom he has proclaimed as his mother, or the picture of a woman he has proclaimed to everyone as his mother, was, in fact,

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the madame of a bawdy house? A. Yes, if he knew that to be the case and wanted to be that frank. He was intoxicated.

Q. You say there is nothing indecent or filthy in that?

A. Nothing indecent or filthy. It may be poor taste and commonplace writing.

Chairman Myers: Is there anything in the story to indicate she may not have been his mother?

The Witness: Yes, there is.

677

Mr. Hassell: Yes, but he accepted it as a picture of his mother. He didn't know who his mother was.

The Witness: I think that brings out respect of womanhood. Even after he was told this.

*By Mr. Hassell:*

Q. Coming to "Goldbricking with Esquire". A. Page, please?

Q. On page 93. In this connection, these alleged jokes in this magazine—all of the off-color jokes have not been pointed out here. I so stated to Mr. Harding in my letter. We will only cover those that I pointed out to counsel.

The second alleged joke on page 93 reads:

678

"Five times the beautiful woman stared invitingly at the man sitting in the lobby of the hotel. Then growing bolder she approached him. 'Hello,' she said, smiling sweetly.

" 'Don't bother me, madam,' he replied brusquely 'Liquor is my weakness.' "

Doctor, do you contend that there is no indecent implication in this alleged joke? A. I contend that is not indecent. Unquestionably it refers to sex.

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Q. In other words, this woman manifestly tried to pick this man up. A. That happens all the time.

679

Q. The third item in that column:

"A pullman porter who had started out on an all-night run had his trip cancelled. Returning home unexpectedly, he took a look around the house, then took out his razor and stropped it vigorously.

"What you doin', Sam?", asked his wife.

"If dem shoes stickin' out from under the bed ain't got no feet in 'em, ah is gonna shave."

Do you find any indecent implications in this joke? A. I do not.

Q. What would you say the joke means? A. I think the implications are that if there is somebody under the bed he is going to attack him with the razor.

680

Q. Why would somebody be under the bed and why should he attack him with the razor? A. Because he would probably have been visiting his wife.

Q. And having been caught almost in the act— A. Possibly in a compromising position.

Q. Yes. The Pullman porter indicates that he may take revenge on him. A. Yes.

Q. Handle him roughly. A. That is correct.

Q. You say there is no obscene, lewd, lascivious, or filthy implications in that joke? A. No.

681

Q. I believe the next one I called attention to was No. 17 which is the second from the top on page 93, the last column. This reads:

"What does f-e-e-t spell, Johnny?", asked the teacher. Johnny didn't know.

"What", persisted the teacher, "is it that a cow has four of and I have only two?"

"Johnnie's answer was as surprising as it was unexpected."

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682

Now, what would have been the expected answer to that question? A. I suppose "feet".

Q. Well, what would have been the unexpected answer?

A. I suppose tits.

Q. So with that explanation of that alleged joke you wouldn't say that that is indecent, obscene, lewd, and lascivious? A. No.

Q. Or that it has a filthy implication? A. I don't think it has. I don't think tits is an indecent word.

Q. Now, pages 104 and 105: "The Sporting Scene."

"Nature's darling discovers that a little learning of sports can be much too much."

683

Now, Doctor, isn't this a story of a woman war-worker who became fatigued by reason of having been required to pose for pictures in addition to her work, and so forth, and required a rest and was given a vacation? She goes on a vacation. Her name is Libretta. A. Luberta, isn't it?

Q. L-u-b-e-r-t-a? A. That is right.

Q. She goes on a vacation and when she gets to the vacation spot she tries various diverting sports. She tried—  
A. Golf first, I think.

Q. Was it golf? A. Yes.

684

Q. I believe it was golf. Some man playing golf tried to pick her up and she repulsed him, and then she tried tennis, and the remark is made in the lower part of the second column, "She was not one to injure eyes in her tennis outfit. When her playmate got a load of her lites, he wondered if he could change his room."

Then she goes, I believe, to swimming, and over the first column of page 105, near the middle of the column, it is said:

"Luberta in her bathing suit was not one to be passed up except by a man who had to tap his way around with



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a white cane. She dove in quickly and was splashing around, strictly minding her own business, which was very lovely business fore and aft to look at.

685

"Then, be damned if a man didn't swim right into her and go into his act," and so forth.

After repulsing him she gets disgusted and starts back home and on the train, and I am reading from the last column:

"On the train when she gave the conductor her ticket she growled, 'I will slug the S. O. B. who says I'm not doing this right.'"

She was criticized by each of the others who tried to make contact with her heretofore.

686

What do you understand the line, or word, S. O. B. stands for? A. I think we understand what that is. Do you want me to repeat that? I will say that it is a coarse, commonplace expression. I think we all understand what that means.

Q. Well, following this paragraph I read:

"The conductor gulped, but said nothing to Luberta. To a brakeman he whispered, 'Keep an eye on that woman. She's nuts.'"

"When Luberta got home she spent the rest of her vacation sitting around the house, or in movies, or saloons. She married a 4-F guy and they were very congenial, having twenty-one progeny just as fast as nature would allow.

687

"One day her husband said, 'Kids are handy as tax exemptions but when I think of bills I feel faint.'"

"Luberta went to her spouse and patted him tenderly 'I know, Honey, but you don't realize how much fun something can be without so damn much advice.'"

"She meant doing the children's washing, possibly."

Just what did she mean, Doctor? A. Probably having a family and having children or sex life, perhaps.

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Q. The great satisfaction obtained out of sex relations with her husband? A. Possibly.

Q. You say that there are no obscene, lewd, lascivious, or indecent implications to be drawn from that— A. I do.

Q. —article or story? A. I do.

Q. That was perfectly proper? A. I do.

Q. There was one matter in connection with the "Portrait Above The Fireplace" at 56 and 128.

689

You will note on page 56, Doctor, that that is one of the prescribed stories or articles in this issue of the magazine. It has the Rx. A. Since you call my attention to that I have looked over these magazines pretty much, and I find that there are a great many of them.

Q. But that is— A. That is one, yes.

Q. "Especially recommended by the editors"? A. Yes. I notice that it has that *recipe* sign there.

Q. Now, coming to the November issue, Doctor, at pages 45 and 46 you have a large two-page picture of the Varga girl with the verse, "Virtue Triumphs," which should be read in connection with the pose and the expression on the face:

690

"The look of alarm  
On this bundle of charm  
May set up some foolish illusions.  
Her state of attire  
May also inspire  
Some rather ignoble conclusions.  
Perhaps you've surmised  
That the gal's been surprised  
By a villainous sort of a louse—  
But, Brother, you're wrong,  
You're been wrong right along—  
It wasn't a wolf . . . but a mouse!"

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Do you say that this pose which, I will be glad to have the record show, happens to be not a reclining pose, she is seated with her legs crossed, that there is nothing indecent, lewd, lascivious in this picture, or the verse accompanying it? A. It is my opinion that there is nothing lewd, lascivious or indecent or obscene in the picture or the verse accompanying it.

691

Q. What sort of garment would you say this lady has on, Doctor? A. I think it is a corset, or corset-like garment.

Q. Do women wear corsets now? A. Yes, some do.

Q. I thought they called them girdles. A. No they are now wearing a girdle material with certain dresses, or corselette, or corset-like materials; and many patients of mine wear supporting corsets.

692

Q. They are the over-stout or misshapen ones, aren't they, Doctor? A. Well, yes. Yes. That may be a girdle. I will accept that correction.

Q. I wasn't correcting it, Doctor. A. I think you may be correct. You are more correct than I. I think that may be a girdle.

Q. Page 52 we have another of the cartoons, the sheik motif cartoons. I will call it such, the full-page cartoon, showing one Oriental gentleman in the background with his arms about two ladies who are none too heavily clad, you might say, walking away, and in the foreground an Oriental gentleman, possibly a sheik, he has a feather or something on his turban, with three other females, dressed in filmy trousers, I guess you might call those jackets, with only, partly covered breasts, under which is this legend:

693

"Such a neighbor—always borrowing."

Doctor, what do you think the neighbor is borrowing, these two— A. Women.

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694

Q. What shall we call them? A. Harem girls?

Q. Concubines? A. Yes, harem girls.

Q. What do you think the neighbor is borrowing the two girls for? A. Well, you can let your imagination go and say for sex purposes.

Q. Will you say there is nothing lewd, obscene, lascivious, indecent or filthy or having sex allusions or implications that can be drawn from this cartoon? A. I do.

Q. Now, coming to page 60, we have the colored photograph on page 60, and on 61 under the title and description, "The Esquire Canteen. The girls from the Folie Bergere."

695

The first sentence in that reads:

"Here are five perfectly good reasons why service men and mere civilians pause for laughter, libation and libido at the Folie Bergere."

What does libido mean, Doctor? A. Sex instinct.

Q. Sex entertainment referred to here? A. Well, entertainment of the libido would be entertainment of the broad sex instinct.

Q. Well, they are referring here to—this sentence I have read to you refers to entertainment, doesn't it? A. Yes.

Q. "Pause for laughter, libation and libido at the Folie Bergere." A. Yes.

696

Q. You still say that that wording, that language, coupled with the very scanty costumes of the females pictured on page 60 doesn't have any obscene, lewd, lascivious or indecent implication? A. I do.

Q. Now, on page 66, we are back again to the half-naked native girl motif, in a cartoon at the top of page 66. This shows two soldiers with their hands upraised surrounded by, on one side, three females clothed in, what do you call those, sarongs, that covers the buttocks only, and nothing

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above the waistline? Each of them have a spear, or two of them have a spear and there is one shield, possibly. On the other side two females similarly clad with spears and shields and underneath is the legend: "It's no use, Sarge—we're outnumbered—Yipppee!"

697

Apparently these soldiers are extremely elated over being outnumbered in this instance, aren't they, Doctor? A. Yes. They seem to have laughter and elation from their expression. They seem to be elated.

Q. Why would you think they would be elated? A. They might be attracted by these girls here surrounding them.

Q. They are attracted by the half-naked women? A. Yes.

698

Q. Who are surrounding them? A. Yes.

Q. Anticipating sexual gratification? A. Possibly.

Q. Doctor, you would still say that that cartoon has no indecent, obscene, or lascivious implication? A. I do, yes.

Chairman Myers: Suppose we recess for ten minutes.

(Whereupon a recess was taken.)

Chairman Myers: All right, proceed.

*By Mr. Hassell:*

699

Q. Now, Doctor, next we come to the picture appearing on page 73, which appears to be a photograph in color entitled: "Golden Mould." This lady is apparently reclining, is she not? A. She is.

Q. And this silk-like material thrown across her body indicates that aside from that material she is nude, doesn't it? A. I would think so.

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700

Q. Apparently the material is so sheer or else it is wet and clings to portions of her body, isn't that true? A. That is right.

Q. You can see the umbilicus here, can you not? A. Yes.

Q. Now, how about the shadow down below that? Would you think that might be the pubic hair showing through the material? A. No, I don't.

Q. The breasts are very definitely defined in this photograph, are they not? A. I would disagree. They are rather indefinite there; pretty well covered completely.

701

Q. You mean to say the lower outline, more than half of the lower part of the right breast, you can see that, can you not? A. I thought it was rather poorly outlined in this, but I will accept, if you want to say so. Let us assume that it is.

Q. Your imagination wouldn't be strong enough to define the metes and bounds of that breast? A. You are talking about the right side?

Q. Yes. The left as you look at the picture? A. Yes. You can see that there is a breast there, but I think it is poorly defined.

702

Q. Now, Doctor, in view of the pose, the method employed in covering the model, the exposure of the form, and so forth, don't you say that this picture has any indecent, lewd, lascivious, sex implication? A. I don't.

Q. On page 77, "First Nights and Passing Judgments," an article, the sub-title of which reads: "If play producers give a damn about making this member of the audience happy, they can skip the following." By George Jean Nathan.

The first numbered paragraph in the first column starts out, "Simple interior sets," down to about seven or eight lines which has—perhaps I better read the sentence:



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"Simple interior sets, otherwise perfectly all right, which, for no good reason, and merely because their designers can't resist a little artistic self-expression, include such stairways as have seldom been encountered outside the Palazzo Vespucci, or an old-time St. Louis sporting house."

703

Do you know what that refers to, that St. Louis sporting house? A. I don't know exactly, but I will assume that it might be a house of prostitution.

Q. Over in the paragraph numbered 10, this language: "Young floozie characters wearing short skirts that tightly embrace their hindparts and who interpret their roles by crossing their legs three inches above the knees and dangling red handbags big enough to hold the books of the Corn Exchange Bank."

704

Their hindparts are what? What does that have reference to? A. I suppose to the buttocks.

Q. In paragraph 15:

"Any more plots about someone who mistakes an innocent institution for a bawdy house, or vice versa."

There is no doubt about what bawdy house means?

A. No.

Q. Then, column 4, paragraph 21:

"Den don't gimmie any more a dat crap."

What does crap mean? A. Jargon, I suppose.

Q. What is that? A. Any of that back talk.

705

Q. I mean what does the word mean ordinarily? A. It is the vernacular for cheap talk, isn't it?

Q. Does it mean anything very filthy actually? A. It could be, in another sense, not in this sense, but in another sense the word itself could mean something else. I think it could mean dung or manure.

Q. And then it goes ahead:

"What da Hell did yuh tink I wuz gonna do? Hang

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around dis dump waitin' fer Santa Claus tuh take care a me, fer Chris' sake? Looka you! What a yuh got? Six years yuh went tuh college an' what da Hell a you got? A bouzy handout a thoity bucks a week! Not fer me! Yeah, I got mine, but I took it!" A. That last paragraph, of course, is from *The Dead End Kids* and these paragraphs are all, as I see it, criticisms and are meant to show up—it is a passing judgment, it is meant to show up and in that way I think they are justifiable.

707

Q. Does the fact that filthy, indecent, obscene, lewd and lascivious language happens to appear in some play justify the inclusion of that language in a magazine of this sort? A. Well, I don't—

Mr. Bromley: Wait a minute. I object to that question on the ground that it assumes that the language is filthy, indecent and obscene.

Chairman Myers: Read the question.

(Question read.)

Chairman Myers: It seems to me there is an assumption.

708

Mr. Hassell: I submit the question is entirely hypothetical.

Chairman Myers: Well, but it is assuming something, just the same.

Mr. Hassell: I am asking this witness, who is qualified as an expert, and I am assuming that such filthy language is taken from a play, and I am asking him if it is justifiable to include it in a magazine.

Chairman Myers: But are you assuming that it is included in the magazine, or are you stating that as a fact?

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Mr. Hassell: I haven't stated that as an assumption applied to this magazine or it is any magazine, generally speaking.

709

Chairman Myers: Well, on that basis, I think the question is proper.

The Witness: On that basis I certainly don't think it should be included in a magazine.

Q. I see. Now, Doctor, do you think this language we find in this article, the language I pointed out to you in several paragraphs which I have read, is filthy, indecent, lewd, lascivious, or obscene? A. I do not. I think it is coarse, profane, and borders on vulgarity.

710

Q. Coming to page 83, the cartoon in the upper left-hand corner of this page which carries other cartoons, showing two girls, possibly of the floozy type, conversing with a man in the background with his face turned away, and apparently dancing couples shown through the door, and to the back of the lady seated in the red overstuffed chair there are what appear to be hats, and under this cartoon appears this legend:

"My date's at the awkward age—all hands and no dough".

Doctor, what do you think that statement made by the female character shown at the left of the cartoon, who has her mouth open, is intended to convey? A. That he probably wants to make love to her, but probably hasn't any money to pay for the dancing.

711

Q. Love how? A. Probably wants to hold hands or put his hands on her.

Q. Would that indicate he wanted to feel the lady on parts of her body? A. That I think is stretching it a bit, possibly.

Q. You don't think there is any such implication in this cartoon or the language underneath it? A. There might be something of that nature, yes.

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712

Q. That had not occurred to you before in your study of this? A. Yes.

Q. It did. A. Not when I looked at the cartoon.

Q. It had not occurred to you when counsel questioned you on direct about this cartoon? A. No.

Q. It just occurred to you now? A. It just occurred to me since I was in here yesterday.

713

Q. I see. Now, coming to page 89, which is what appears to be a picture in colors with the title "Stage Door Esquire. Backstage at the Greatest Show on Earth," and shows in full two women, portions of two other fully clothed women, one seated and the other one possibly standing, and a hobo clown in the center, the female figure at the lower right clad in an ornate turban effect hat, something draped around her neck that hangs over her breasts, under which appears possibly a brassiere, and three fans of brown crystallite material surrounding her middle or buttocks, with nothing visible in front of her anatomy.

Would you say that this figure in this picture is not indecent, lewd, or lascivious? A. Definitely not.

Q. Now, coming to pages 94 and 95, another one of the usual Esquire features, "Goldbricking with Esquire", purporting to reproduce certain jokes or alleged jokes.

714

Doctor, I believe on direct examination either with respect to this matter or similar matter appearing under the same heading, there was some reference either by counsel or yourself to the fact that this matter was taken from publications produced in Army camps. A. I didn't make that statement.

Q. You did not? A. I know nothing about that.

Q. If that is so, do you think that would affect the question of whether the matter should be regarded as obscene, lewd, lascivious, or filthy? A. No.

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Q. Now, we have first, item 4, which is the last item in column 1 of page 94. This extends over to the top of column 2 of that page, and reads:

715

"The corporal was going home on a furlough and was lucky enough to have a Pullman reservation. When he got ready to retire and pulled back the curtains to climb in his berth, he was astonished to find two luscious"—note the word "luscious"—"blondes reposing there. He carefully checked his ticket, reservation and berth number to make sure he wasn't wrong, then said: 'I'm deeply sorry, ladies. I'm a married man—a man of respect and standing in my community. I cannot afford to have a breath of scandal touch me. I am sorry—one of you girls will have to leave.'"

716

You note the statement that one of the girls will have to leave? A. He should have said both of you will have to leave.

Q. And that these are luscious blondes. The implication is, isn't it, Doctor, that he will willingly, gladly, and anxiously spend the night in the berth of one of the luscious blondes? A. That interpretation can be made.

Q. What other interpretation could be made? A. But in his embarrassment in coming on the luscious blondes he should have said, "Both of you ladies will have to leave."

I don't think there is any humor in the fact that he was going to get in bed with one of them, but the humor is in the fact that he said one would have to leave rather than both of them. That's the way I take it.

717

Q. Had the publishers of Esquire so printed the joke, do you think anybody would have gotten any kick out of it? Do you think the publishers of Esquire would have printed it at all? A. I think that is funny. Here is a respectable man in a community—yourself, for instance, Mr. Hassell—who goes to his berth and says, "I am a perfectly respectable

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718 man, I work for the Government, but one of you will have to leave."

You would want both to leave and I would, too.

Q. Being a married man, anybody who told such a joke about me would be uttering slanderous words, actionable.

A. Certainly, I agree with you.

Q. But, do you think there would be any reason for including this joke at all, or would it have been a joke had it been worded as you indicated? A. Of course, not, that is the point of the joke.

719 Q. And certainly the obscene, lewd, lascivious implications in that joke— A. There are no such implications. If you cut that sort of a joke out, you cast all American humor in the ash can. That is the most innocent joke and it is as old as the hills and as common as the leaves on the trees.

Q. The fact that it is old does not make it less obscene or lewd or lascivious? A. No, but it is not obscene.

Q. You don't think there is any obscene, lewd, or lascivious implication to be drawn from the story that puts a respectable man in bed with a luscious blonde, a perfect stranger to him, in a Pullman? A. But the man didn't get in bed, did he? We don't know that.

720 Q. But the joke leaves that impression, that he is willing and anxious and desirous. A. I am sorry, I didn't get that at all.

Q. The next one of these items is item 15— A. Is that on page 94?

Q. The fourth column of page 94. This reads:

"He: 'I see your husband has been promoted to a master sergeant. I suppose he's brilliant and knows everything.'

"She: 'Don't fool yourself. He doesn't suspect a thing.'"

A. That probably refers to some friendship that she has had with this particular man, with the "He".

Q. Some sub-rosa liaison with this "He", who is talking to this married woman? A. Some sort of friendship or relationship. You can go as far as you like.



*Kenneth J. Tillotson—for Respondent—Cross.*

Q. Something that is concealed from the husband? A. That is right. 721

Q. The natural implication is that it is a sexual relationship. Isn't that the implication? A. I think that is what most of us think of first.

Q. So, with that in mind you would say there is nothing lewd, lascivious or indecent in this alleged joke? A. No.

Q. Now, the next is item 24, which is the first item at the top of column 2 on page 95, which reads:

"Home on furlough the soldier was surveying his sweetie whom he hadn't seen in months: 'Slimmer, aren't you?', he asked.

"'Yes,' she replied, 'I've lost so much weight you can count my ribs.' 722

"'Where,' asked the G. I. with a gleam in his eye, 'do I start?'"

Doctor, do you think this implies or conjures up a vision of this G. I. soldier, home on furlough, starting on a manual excursion of the body of the lady to whom he is talking? A. I didn't get that.

Q. You didn't get it? A. No.

Q. I see. So you think there is no obscene, lewd, lascivious implication in this joke? A. I do not think there is any obscene, lewd, lascivious or filthy implication in this joke.

Q. Or indecent? A. Or indecent. 723

Q. Item 27, which is the last item on column 2 on page 95 and extends over to the top of the next column and reads:

"The beautiful Army hostess, newly arrived in camp, thought she would take a nude dip in the clear blue lake while the men were out on drill and no one was nearby. It so happened that a rookie K. P. was sent down to the lake for a bucket of water, and seeing her pink clothes on the bank, sat down to watch. The beautiful Army hostess re-

*Kenneth J. Tillotson—for Respondent—Cross.*

724

mained submerged up to her neck until she could no longer stand the chilling water, whereupon she scampered up the bank and found an old dish pan half buried in the mud. Hurriedly digging the pan out, she held it in front of her like a shield and came ashore.

"'You wouldn't have such a smirk on your face if you knew what I'm thinking', she said.

"'Oh, I know what you're thinking, all right,' said the K. P. 'You're thinking that pan's got a bottom in it.'"

725

Now, what portion of the anatomy of this nude female do you think, Doctor, that pan was covering? A. In imagination we could say that it covered her genitalia. Apparently it didn't.

Q. Here we have a joke and, as near as words can approximate it, a picture which definitely shows the pubic regions there. This young woman exposed to the view of this young man— A. We have in this a joke first. Secondly, words which lead some imaginations, probably not all, to conclude what you have just stated about it. I still feel it is not lewd, filthy, indecent, or obscene.

726

Q. But this joke does point to the most erogenous zone as far as the male eye is concerned, does it not? A. It may connote that. It is by connotation only; it does not describe it.

Q. What, aside from that, does it describe? A. Just what it says. You and I are now talking about this joke, the connotations of what is written here.

Q. The natural implications, the natural or the perfectly reasonable picture that any man would get from reading those words. That would be a visualization of just what is said here, would it not? A. That would be a visualization of genitalia. What his visualization of that would be might be different from yours or mine.

*Kenneth J. Tillotson—for Respondent—Cross.*

Q. What else could it be? A. Nothing else.

Q. In view of that, you still say that there is nothing lewd, lascivious, obscene or indecent in this joke? A. In this joke, yes.

Q. Now, the next item is 28, which is the second item appearing in the third column at the top of page 95. This reads:

"Have a good time at the party, daughter dear, and be a good girl."

"Make up your mind, mother."

You say that that alleged joke has no obscene, lewd, indecent, lascivious implications, Doctor? A. I do.

Q. You think it is perfectly reasonable to presume that this girl could not be a good girl— A. And have a good time.

Q. And have a good time? A. I am assuming that, yes.

Q. But that doesn't convey to your mind anything indecent? A. Not as a joke, no.

Q. The next item in number 30, which appears in the second from the last item in column 3 on page 95 and reads:

"Buck private: 'I'm afraid we can't have much fun tonight. All I have left of my pay is some small change."

"Sweet young thing: 'Well, how much do you think it takes to send my kid brother to the movies—a five dollar bill?'"

Would you say, Doctor, that you don't think there is anything indecent, lewd, lascivious, or obscene in that alleged joke? A. I do not.

Q. No such implication? A. No, sir.

Q. Would your approach to these alleged jokes be altered, Doctor, by the fact that they are carried in a magazine purportedly for men only, or for men, and a magazine that features such things as this and the cartoons that we have called attention to and the pictures that we have called at-

*Kenneth J. Tillotson—for Respondent—Cross.*

730   tention to? A. I don't think I would call them any differently anywhere.

Q. The next item is number 31, the last item in column 3 on page 95.

"'Pardón me, Miss,' said the sentry. 'But it's against regulations to swim in this lake.'

"'Well, for Heaven's sake!,' exclaimed the maiden, 'why didn't you tell me before I undressed?'

"'It ain't against regulations to undress, lady.'"

731   Would you gather that this sentry, who is talking, gets any sexual gratification from viewing this young lady who was about to swim in the lake in the nude? A. I couldn't get that interpretation of what the soldier gets from it. I think he was being very technical and it is sort of a coarse joke.

Q. You say it is coarse, but not lascivious, lewd, obscene, or indecent? A. That is right.

Q. Now, the next item is 35 or 36. I assume the cartoon probably does go with this joke.

Mr. Bromley: That is a picture of soldiers camouflaged as trees. They are undoubtedly looking through the holes, too.

732   Mr. Hassell: At two nude females in the water.

Mr. Bromley: You bet.

*By Mr. Hassell:*

Q. And another one removing her clothing on shore. And under the cartoon appears this legend: "You're sure there are no soldiers around here?" but from the way the trees are leaning, some peeking behind others, apparently there are soldiers there.

*Kenneth J. Tillotson—for Respondent—Cross.*

Now, under that follow this—I think it is separate from the next item, 36—that appears to be a joke in itself.

733

Here is the fourth item, the cartoon and legend at page 95, column 4. And under that is item 36, the fifth item on that page, which reads:

"A beautiful young lady went for a swim in a secluded spot, but forgot to take a towel. She had a swell swim then came out on the bank and was allowing Nature's balmy breezes to dry her, when she heard a rustling in some nearby bushes, 'Whose there', she cried in alarm.

"'It's Willie,' answered a rather high-pitched voice.

"'How old are you, Willie?' asked the girl.

"The answer came quickly: '79, darn it.'"

734

Now, taking the cartoon, Doctor, item 35, which we referred to first here, do you accept counsel's statement that there are soldiers camouflaged as trees in the background, peeking at these girls in the nude and getting nude and preparing to swim? A. I will.

Q. Would you say that there is nothing indecent, obscene, lewd, or lascivious in the implications to be drawn from this cartoon, and the legend underneath it? A. I do.

Q. Do you think it is perfectly proper for soldiers or males to peek at females surreptitiously while such females are in the nude or in bathing? A. I do not.

735

Q. You think it is perfectly proper to recount that in a joke of this sort? A. I do, in a joke.

Q. And you think no obscene, indecent, lewd, or lascivious implications can be drawn from the cartoon? A. I feel certain of that.

Q. As to the other item, 36, there is an individual lady in that alleged joke and it appears that Willie is in the bushes peeping at this individual nude who has come out of the water and is drying herself in the breeze without a

*Kenneth J. Tillotson—for Respondent—Cross.*

736 towel. Here we have the peeping Tom motif, don't we? A. It could be.

Q. It could be? A. Yes.

Q. And why does 79-year old Willie say, "Damn it", when he tells his age? A. He probably doesn't get much sexual inspiration from the nude figure.

Q. But the person who would buy such a book as *Esquire* and read such jokes as this, probably would get some sexual gratification from reading that? A. I wouldn't say that.

Q. You wouldn't yourself, would you, Doctor? A. No.

737 Chairman Myers: While Mr. Hassell is waiting, perhaps you will clear this up.

As I understand, when you refer to mores, you mean the habits, customs, traditions, institutions, and other undefinables that make up conduct in the life of people in a given time and place?

The Witness: Yes, I do.

Chairman Myers: That is like Professor William Graham Sumner's definition attributing all human conduct to four particular things, hunger, fear, love and hate.

The Witness: Yes.

738 Chairman Myers: And you are in the medical field to psychiatry what the surgeon would be in another field of medicine?

The Witness: That is right.

Chairman Myers: You have made a special study of that line?

The Witness: Yes.

Mr. Cargill: Possibly you could define, Doctor, the sexually normal person. What would be the sexually normal person?



*Kenneth J. Tillotson—for Respondent—Cross.*

**The Witness:** First of all, there are a great many variations within the normal sexual individual, and it is a pretty broad field to define, but I would say the average normal individual gets his sexual gratification in the normal way. I would say that the average normal individual abides by the conventions and standards of our society and does not get any real sex stimulation from anything that is presented here, that has been interpreted as inspiring sex.

739

As a matter of fact, in thousands of cases I have studied it is only a minimum, even of the abnormal, who get any sexual gratification from pictures, sex material, and those individuals are usually sex deviates.

740

I defined the normal person who would read a story or a joke with a double meaning and get a laugh out of it, but that wouldn't inspire him to read more material or to impure thoughts or to sex activities. Most of the sexual psychopaths, the deviates, don't get any kick out of these magazines. They want something, they want the real thing, they want something that really goes to town. Something that is really obscene and vulgar without any question. The normal individual, on looking at these magazines, as I view it, doesn't get any particular sex inspiration out of them. They get the humor and they get the play on the instinct of sex and they get the thrill.

741

For instance, I asked a boy at the induction center "Do you like to go out with the girls"?

He says, "Doctor, don't you like to go out with women"?

I don't think there is anything sexual except in a broad way in that. I mean when the average American

*Kenneth J. Tillotson—for Respondent—Cross.*

individual—for instance, in thinking it over, I think the 20 who do, and the 20 who don't, and the 60 who don't get the opportunity, is about right. I think that refers to the expression of sex. I suppose that expresses sex in the unmarried, but in my work with the normal at Harvard College I would say that far less than 20 percent of the boys have had sexual experiences. I would say that well over 65 percent have sexual problems in adolescence. I would say well over that. I would say 65 percent that come to the psychiatrist, or hygiene department, for clarification, and never have any of those men been troubled except one or two deviates with current literature books, either Esquire or any other. They know more than that. They are wise to the facts of life; in fact we give it to them in very good books, like Kuykendahl's "Sex Practice in Young Men." We cite case histories in that.

The older patients—I think our education now is to try to educate the younger people so they won't have to go through the experiences that my middle-aged patients or older patients have gone through, where, if they had known more about it, and the sex wasn't frowned at, or wasn't tabooed, and the forbidding of this material led them not to get a proper orientation.

Does that answer your question?

Mr. Cargill: That is very good.

Now will you give me a definition of the sub-normal?

The Witness: Sexually?

Mr. Cargill: Yes.

*Kenneth J. Tillotson—for Respondent—Cross.*

The Witness: Well, we run into sex problems, or sub-normal sex problems, in two groups. First of all is the feeble-minded group. The group who haven't the normal intelligence, and many of them are in institutions, and, of course, many of them are outside, unfortunately, and they would be the group that wouldn't necessarily be able to read and write very much, but they are interested in sex. They are the low moron type, and they get into such difficulties.

745

I think a good part of the prostitution are in the mentally deficient and the low intellectual standard as well as low moral standard.

746

Then we have the sexual psychopaths, the individual who may be a most intelligent individual, he may occupy a very important part of society. He may be a clergyman, or priest or doctor or lawyer or anyone, and he may be quite successful, yet part of his life is devoted to really trying to satisfy some craving in his sex instinct, and he doesn't quite know what it is. He may have a perfectly satisfactory married life, or it seems to be, and yet it is unsatisfactory, and he may go scouting around for lewd pictures, or obscenity, or things like that.

There are many deviations. I haven't touched on homosexuality or the numerous deviations in sex, but that gives you a general idea.

747

Now, there is no way of knowing what percentage of the population has sex problems. I can't judge that, but in the so-called neuropsychiatric group that I see, and I have seen a lot, I think sex plays an important part in some way in at least one-third.

Mr. Cargill: Would you say, then, that one-third of the people of the United States would be sub-normal?

*Kenneth J. Tillotson—for Respondent—Cross.*

748

The Witness: Oh, no, I didn't mean that at all.

Mr. Cargill: Have you any idea, or could you give us any estimate of this sub-normal percentage?

The Witness: No, it would only be a guess. But from my work at the induction center I think that the intellectual average of the men who come through the first corps area, this is just men, is just about what we think that it should be. We have had sometimes, in 500 men a day, rejections, as sub-normal mentally, for the Army, of as many as 25.

Mr. Cargill: Twenty-five out of 500?

749

The Witness: Five hundred, yes.

Mr. Cargill: It would be five out of a hundred?

The Witness: Yes.

Mr. Cargill: Five percent?

The Witness: Yes. That is a little high for our area. Other days it wouldn't run more than one or two, or three percent.

Mr. Cargill: Do you think there is any difference in that percentage between men and women?

The Witness: No, I wouldn't say so.

Mr. Cargill: Would you say it would be the same?

The Witness: About the same, I should think.

750

Mr. Cargill: Doctor, what would be your definition of sexual impurity?

The Witness: You mean as an act?

Mr. Cargill: No. We have used the word sexual impurity here during this hearing.

The Witness: Well, anything that stimulates lasciviousness and inspires sexual desires that are illicit. Anything that stimulates the sex impulses so that it might be difficult for the individual to control that impulse, I would say, would be inspiring impure sexual thoughts.

*Kenneth J. Tillotson—for Respondent—Cross.*

Mr. Cargill: Do you think that pictures or reading material would inspire the sexual impure thoughts in this five percent, or sub-normal people?

751

The Witness: I am sorry. That five percent wouldn't be able to read sufficiently to get it, but those were the real illiterates. But let us take a group higher. It would be a group higher than the group you referred to and that would be, I would say, arbitrarily, another five percent, and I think that five percent, if they saw grossly obscene and indecent things would get some inspiration out of it. They wouldn't be able to see double meanings or get double meanings out of things such as the jokes we have had here.

752

Mr. Cargill: Do you think that having those inspired thoughts that would lead to further acts?

The Witness: Not necessarily. They might in some.

Mr. Cargill: Well, Doctor, do you believe in the normal and the sub-normal and the super-normal that they practice any time during their lives up to, say, 25 or 30 years, that they practice sexual impurity any time?

The Witness: Do you mean by that masturbation?

Mr. Cargill: Yes.

753

The Witness: I think the majority of both men and women up until adolescence masturbate, a great majority, and after that—

Mr. Cargill: What percentage would you say that is?

The Witness: Well over 90 percent. They may do it more or less unconsciously, but it is masturbation, and I think most of that would be conscious.

Mr. Cargill: Then 95 percent of our population through adolescence does perform this act?

*Kenneth J. Tillotson—for Respondent—Cross.*

754

The Witness: I would think so.

Mr. Cargill: Do you think that pictures and literature have a tendency to excite or cause this practice to be more prevalent than it would be ordinarily?

The Witness: I do not, except in the exceptional cases.

Mr. Cargill: Doctor, having studied these magazines, these eleven magazines, and having devoted considerable time to them, do you think that the magazine features sex as a feature?

The Witness: I do not.

755

Mr. Cargill: Do you think that the cartoons play on that—

The Witness: Yes, they do.

Mr. Cargill: —on that particular feature?

The Witness: Yes.

Mr. Cargill: Sex?

The Witness: Yes.

Mr. Cargill: And the cartoons are a regular feature of the magazines, aren't they?

The Witness: Yes.

Mr. Cargill: Then would you say—

The Witness: Yes, sir.

756

Mr. Cargill: —that that is one of the features?

The Witness: Yes, sir.

Mr. Cargill: Of this magazine?

The Witness: In a general survey, yes, it is.

Mr. Cargill: Would you say that those cartoons depict loose morals?

The Witness: No. The cartoons?

Mr. Cargill: Yes.

The Witness: Those are the pictures. Certainly some of them do.



*Kenneth J. Tillotson—for Respondent—Cross.*

Mr. Cargill: And yet they are a feature, are they not, of the magazine? 757

The Witness: Yes.

Mr. Cargill: Would you say that the pictures and the cartoons and the reading material in these magazines properly portray the customs of our times?

The Witness: Yes, I think that they do.

Mr. Cargill: You don't think that the magazines at large are loose and immoral?

The Witness: No, I don't think that those are immoral or loose.

Mr. Cargill: Yet you say that the cartoons do depict times and customs of our times? 758

The Witness: I think they do. The jokes are characteristic of jokes you see in other periodicals.

Mr. Cargill: Turning to these magazines, would you give a definition of them as sexey magazines? Would you put them in that category, in your opinion?

The Witness: Yes, I think they are somewhat sexey.

Mr. Cargill: That is all.

*By Mr. Hassell:*

759

Q. You refer to the young adults with whom you came in contact at Harvard College as being sophisticated and educated on sex matters? A. More or less.

Q. That the education along that line is to remove the veil of secrecy, bring sex out into the open? A. Bring it out as a biological fact of life, and as a biological component of the well integrated individual.

Q. That is the philosophy of the nudist, isn't it? A. No,

*Kenneth J. Tillotson—for Respondent—Cross.*

760 I wouldn't think so. I think the nudist is the extremist. Yes, he may adopt that philosophy, but I think as a rule they are extremists.

Q. Have you read any nudist books? A. Yes, I have.

Q. Isn't that the philosophy they preach, Doctor? A. They do in an extreme degree.

Q. How do you mean extreme? A. Well, they are extremists.

Q. They are bringing sex into the open, aren't they, Doctor? A. That is true.

761 Q. They have the sex commingled; they have the two sexes commingled to get accustomed with one another. A. That is not what I am talking about. I don't approve of that at all.

Q. Their contention is that that militates against the impurity and immoral sex conditions. A. That is not what I am talking about at all.

Q. Would you admit, Doctor, that you cannot predict what would be the reaction of any particular male who reads these pages of Esquire magazine? A. That is true.

Q. You cannot say for certain that it will not, or portions of it will not arouse libidinous thoughts and ideas? A. I cannot.

762 Q. You cannot? A. No.

Q. Now would you say that any intelligent person, normal intelligent person, can easily and readily and quickly decide for himself the effect, from a sexual standpoint, that these things in these magazines would have upon his mind? A. That is right. I think he could.

Q. Now, Doctor, you have spent a good deal of time, haven't you, before you came here? Ten days or two weeks in studying and conferring about the matters involved in these magazines, have you not? A. Yes, I spent a good deal of time.

*Kenneth J. Tillotson—for Respondent—Cross.*

Q. Your time is valuable? A. I consider it so.

Q. You are, in fact, being paid a substantial fee for being here to testify aren't you? A. I expect to be. 763

Q. You have been offered, or promised that? A. I have been given to understand that my regular fee would be forthcoming and, as a matter of fact, my regular fee will be somewhat lower than usual because I am interested in the fundamental issues as I see them here. I went to a great deal of time and trouble to cancel important engagements today in Boston to stay here and see this thing through.

Q. So you are somewhat here in the capacity of a crusader? A. I think the freedom of the press and so forth is involved here. It has been sold to me that way, anyway. 764

Q. You are here, then, somewhat in the capacity of a crusader? A. I am, and my successors are.

Q. Would you want to tell the Board what fee you are being paid? A. I don't know yet.

Q. You don't know? A. No.

Q. You said your regular fee. What is your regular daily fee? A. My regular daily fee is \$500 a day for going to court to testify.

Q. Have you testified as an expert on obscenity in any court cases? A. In several cases where obscenity has been involved in Massachusetts. I can't cite the cases at the moment, but I have. 765

Q. You were called to testify as an expert to advise the court as to whether or not the matter involved was obscene or was not? A. I have many times done that.

Q. Can you cite us one such case? A. By the Attorney-General of Massachusetts, Bushnell. I can't cite the case. He has the file.

Q. The Attorney-General Bushnell of Massachusetts called you and you actually appeared in court to testify as an

*Kenneth J. Tillotson—for Respondent—Cross.*

766 expert on obscenity? A. No, I think I conferred with him I was in consultation with him and advised him concerning cases on obscenity.

Q. But you didn't testify in court? A. I can't recall definitely any specific cases in court.

Q. You can't recall any case, or one case, in which you testified as an expert on obscenity? A. In court?

Q. In court. A. No, not at this moment.

767 Q. You think you are an expert on obscenity, lewdness, lasciviousness, and filth, do you, Doctor? A. I think my capacity as a psychiatrist which deals most intimately with the human mind in all of its variations and its normalcies and abnormal states leads me to have a better than average knowledge of what is obscene and what is the effect of obscenity, lewdness, lasciviousness and all these terms that have been mentioned here, what effect they would have on the individual, the normal and average individual.

Q. Just what experience have you had as an obscenity expert? A. I don't call myself an obscenity expert.

Q. You don't? A. No, indeed.

Q. You don't call yourself— A. I don't know what it means. I didn't know there were such things.

Q. An expert on lewdness or lasciviousness? A. Not at all.

768 Q. Indecency or filth? A. Not at all.

Q. You don't call yourself that? A. I don't call myself an expert on any of those categories, neither have I ever heard of one.

Q. Just how much experience have you had in examining to determine whether or not there are lewd, lascivious, obscene, indecent or filthy books, pamphlets, pictures, papers, writings under statute, local, state or federal statute? Just how many of such things have you examined in the course

*Kenneth J. Tillotson—for Respondent—Cross.*

of your experience? A. Not many statutory, except those specified. I don't know what the statutes are. I don't know what the legal situations were, except that I have been asked in connection with case studies, and in connection with legal action against individuals to examine the material as well as the individuals.

769

Q. In this case in which you advised the Attorney-General of the State of Massachusetts in which obscenity was involved, was your conclusion and recommendation accepted by the attorney-general and acted upon by him? A. I believe it was.

Q. You believe it was? A. I know it was because he called me on all matters pertaining to psychiatric and related subjects.

770

Q. You are now testifying that as a matter of fact he has acted upon your advice in bringing indictments and prosecutions under Massachusetts obscenity statutes? A. I don't know whether he brought indictments or not. You will have to confirm that with him. I know he usually takes my advice in matters of this kind. Probably he takes other advices, too.

Q. How does he take it if he doesn't indict? A. I don't know. I can't speak for the Attorney-General of Massachusetts.

Q. He tells you he takes it, does he? A. Yes, he does.

771

Q. Or you understand that, or get that impression? A. I get that impression. I know him very intimately.

Q. I see.

Mr. Hassell: That is all.

*Kenneth J. Tillotson—for Respondent—Redirect.*

*Redirect Examination by Mr. Bromley:*

772

Q. Doctor, in any one of your answers did you mean to intimate that, in your opinion, the magazine, as a whole, was sexy, did you? A. No, I did not.

Q. Your answers to the member of the Board who addressed the questions to you were intended only to characterize the questioned material being sexy? A. The questioned material in these eleven issues?

Q. Yes. Let me ask you this: Do you mean to say that the questioned material is sexually impure as distinguished from being sexual? A. Definitely not.

773

Q. Would you mind telling us, then, what the priest said when you submitted the material to him? A. The priest said that he saw nothing obscene or indecent about any of the material that he glanced over, and he saw no reason why—he thought that the magazine fulfilled a public need.

Q. Never at any time in any of your clinical, public or private, experience did the magazine *Esquire* play a part as a factor in any patient's sex problems? A. It did not. It has not.

774

Q. Would you say that our current day moral standards are featured by a frankness and forthrightness of expression about sexual matters which is far different from what prevailed 25 years ago or more? A. Very definitely.

Q. Do you believe that as far as the youths of the country are concerned frankness and forthrightness of expression in sexual matters may very well, in the majority of cases, build up a resistance against lewdness, lasciviousness, and sexual impurities rather than break down the moral stamina? A. I do.

Q. Will you tell me this, Doctor: In connection with some of the items you have used the term "commonplace."



*Kenneth J. Tillotson—for Respondent—Redirect.*

Is it your position that although some of the material is coarse, or even profane, the material does not become obscene or lewd or lascivious or filthy? A. Yes, sir.

775

Q. Referring to burlesque a moment, you stated to Mr. Hassell that burlesque has a sexual appeal to many people. Assuming that burlesque has a sexual appeal to many people, would that fact, in your opinion, render the descriptions of burlesque, or the illustrations thereof contained in any of the questioned issues, either obscene, indecent, lascivious, lewd, or filthy? A. It would not.

Q. Now, adopting Mr. Hassell's interpretation of the 20 percent do, 20 percent don't, and 60 percent might, in connection with the juking scene referred to in the "Eve of St. Mark" play, does that change your opinion that that material, text and material, is not obscene, indecent, lascivious, lewd, or filthy, and has no tendency either to corrupt morals, lower standards of right and wrong, or stimulate sexual impure thoughts? A. I believe it does not.

776

Q. Adopting Mr. Hassell's interpretation of the apparel on the various Varga girls and its nature, does this in any way change the opinion which you have expressed on your direct examination with reference to these drawings? A. It does not.

Q. Similarly, Doctor, adopting Mr. Hassell's interpretation, or indeed any other interpretations that have been suggested by anyone to your knowledge, as to any of the complained of material, are your opinions expressed in your direct examination on any of the complained of material changed in any way? A. They are not.

777

Q. In connection with your cross-examination, relating to the take thou sign in the August number, beneath the title, "Many Wives Too Many," will you turn to the table of contents, please, in the August number and read from the

*Kenneth J. Tillotson—for Respondent—Recross.*

778

names of the articles in that table which carry the take thou sign? A. "Many Wives Too Many," "Reporter to the Nation," "Carry on Mr. Barnes," "Credo for a Soldier," "The Eagle Stirs the Nest," "The Esquire Sports Poll."

Q. Do you find in that list any undue emphasis on sex in the take thou sign? A. I do not.

Q. Now, an inspection of each issue, and the table of contents thereof, will indicate in connection with what subject-matters that take thou sign was used, will it not? A. It will.

779

Mr. Bromley: That is all.

*Recross Examination by Mr. Hassell:*

Q. Doctor, I thought you testified on cross-examination that you were not familiar with any of the matters in this magazine excepting and save those pointed out in this case. A. I did.

Q. Now you are testifying as to what the table of contents means and shows with respect to all the other articles. A. I know, I didn't mean that.

780

Q. Now, what material did you show this priest from Esquire? What issue, what particular material? A. He picked it up but I can't say—he looked at a couple of issues and he consulted with me concerning this action. He happened to be in my home soon after this thing occurred, and I don't take any stands that I don't consult the priest about.

Q. And at that time were you acquainted with all of the items that attention was to be called to here? A. No, Mr. Hassell. I think we only had a part of the specified material. I think subsequently I received some more.

*Kenneth J. Tillotson—for Respondent—Recross.*

Q. And he picked up a couple of these issues and casually glanced through them? A. I think he looked at them rather carefully. 781

Q. How long did he look at them? A. He spent all evening with me and I think he spent at the magazines a half to three-quarters of an hour.

Q. A half to three-quarters of an hour on two magazines? A. Yes.

Q. And he thought everything in the magazine was perfectly proper? A. He didn't say they were improper. He said he thought they fulfilled a purpose.

Q. Do you want to state the name of the priest? A. I will. If this was in the nature of a confidential thing I would not, but I will if you want it. 782

Q. Doctor, you are making use of him here. A. I didn't make use of him. You brought him up.

Q. You brought him up to support your testimony. A. I didn't bring him up at all.

Q. You cited him to support your testimony. A. I cited him as an answer to a question of yours.

Q. But you brought it up. A. Let us review the record and see.

Mr. Bromley: The record is counsel asked you whether you had ever shown it to a clergyman and you said, you had to tell the truth because you were under oath, you said you had. 783

Mr. Hassell: I don't recall asking that question, but if I did I stand corrected.

The Witness: I think you did, Mr. Hassell. I did not intend to bring him in.

*Kenneth J. Tillotson—for Respondent—Recross.*

784 *By Mr. Hassell:*

Q. Doctor, did you know everything that figured in the sex or case histories of every single patient or individual you have examined professionally? A. I don't, and neither does any other psychiatrist or human being.

Q. Now, patients are inclined to be secretive about their sex habits and lives, are they not? A. As a rule.

Q. And particularly those who might forget? Those who might not recall at the time what effect this material had on them when they were talking to you? A. That is right.

785 Q. They might not recall it when talking to you? A. That is right.

Q. You can't say definitely that none of your patients ever were influenced in their sex life by the material they saw in Esquire, can you? A. I cannot.

Mr. Hassell: That is all.

Mr. Bromley: That is all.

Chairman Myers: May the Doctor be excused?

Mr. Hassell: Yes.

Mr. Bromley: Yes.

Chairman Myers: All right, Doctor.

786 (Witness excused.)

Chairman Myers: If there is nothing further we will adjourn until 1:30.

(Whereupon, at 12:00 o'clock, noon, the hearing in the above-entitled matter was adjourned until 1:30 o'clock, p. m. of the same day.)

*Herbert W. Smith—for Respondent—Direct.*

**AFTERNOON SESSION.**

787

(The hearing was resumed, pursuant to the adjournment, at 1:30 o'clock p. m.)

Chairman Myers: Proceed, gentlemen.

Mr. Bromley: I will call Mr. Smith.

HERBERT W. SMITH, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Bromley:*

788

Q. Your name, please? A. Herbert W. Smith.

Q. And you live where? A. 180 Prairie Avenue, Chicago, Illinois.

Q. Your business is what, sir? A. Principal of a school.

Q. What school? A. Francis W. Parker School.

Q. What kind of a school is that, Mr. Smith? A. Co-educational school for boys and girls, beginning approximately at the age of four and continuing up to college.

Q. Your educational background is what, sir? A. Bachelor of Arts degree, Harvard University, Master of Arts degree, some subsequent study, but no additional degree.

789

Q. Where did you receive your preparatory training? A. Boston Latin School, a public latin school in Boston.

Q. Following your graduation from college you became an instructor in English at Harvard? A. I simultaneously held two appointments, assistant in English at Harvard, and one as instructor in English at Massachusetts Institute of Technology.

Q. Did you follow that profession from 1912 to 1917? A. Four years at M. I. T. and five at Harvard.

*Herbert W. Smith—for Respondent—Direct.*

790

Q. Thereafter, did you become head of the English department in the Ethical Culture school, from 1917 to 1929?

A. I did.

Q. What is the Ethical Culture school and what kind of a school is it? A. The Ethical Culture school is in New York City, Central Park West. That also is co-educational, covering the same age range. It was and is conducted by the National Society for Ethical Culture.

Q. And thereafter did you become the principal of the Fieldston School in New York City? A. I did.

Q. And were you principal from 1925 to 1938? A. Yes.

791

Q. What kind of a school is that? A. That was the six upper grades, really, of the Ethical Culture school which were separate and were sent to a site on the outskirts of the city and were affiliated as a part of the ethical culture school system.

Q. In 1938 were you assistant professor of education at Ohio State University? A. Yes, during the summer.

Q. And in 1929 and 1930 were you a lecturer in education at New York University? A. During the winter semester.

792

Q. And from 1937 to 1940 were you instructor in education and administration in the Harvard School of Education in summers? A. That is correct.

Q. Were you a director of Graduate Teachers College at Winnetka, Illinois? A. Was and am.

Q. Were you associate director of the American Review from 1923 to 1924? A. Yes.

Q. You are a member of the School and College Conference on English, Progressive Education Association, Country Day School and Headmasters Association? A. Yes.

Q. And are you now president of the Association of Private School Associates? A. No, I was last year.



*Herbert W. Smith—for Respondent—Direct.*

Q. Are you now secretary of the National Council of Independent Schools? A. National Council of Independent Schools, not the National Council of Education.

793

Q. And since 1938 have you been the headmaster of the Francis W. Parker School in Chicago? A. The title is "Principal".

Q. What kind of school is that? A. That again is a co-educational school for ages approximately four to college age.

Q. So, it would be correct to describe you as an educator in the field of pre-college youth? A. Yes.

Q. How many children do you have in your own family? A. Four.

794

Q. What are their ages and sex? A. A man is always embarrassed when his wife is near and that question is asked. One is approximately 31, 29, 22 and 18. The two older are girls and the two younger, boys.

Q. Is one of your sons a pilot in the Army? A. Yes.

Q. And the other is in the Army? A. The other is in the A. S. T.

Q. Now, have you had any special experience with boys or girls from the age of 11 to 20 in the course of your professional career? A. Practically all of my experience has been especially in dealing with boys and girls of that age, as instructor in English and in various departments in English I was responsible for guiding the reading, talking with them about the reading, reading what they wrote, both about their own reading and about their own experience.

795

As principal, I, of course, have had wider responsibility in guiding the personal lives. This would tend to extend beyond the age of those people, so that I am now teaching some of the children of the people whom I have taught in school in previous years.

*Herbert W. Smith—for Respondent—Direct.*

796

Q. Where were you born and brought up, sir? A. Boston.

Q. Have you, at my request, Mr. Smith, examined the cited and specified material which has been charged here as being obscene in the magazine, *Esquire*, for the months January through November, 1943? A. I have.

Q. On the basis of your knowledge and experience and particularly your contact with youth of high school and lower school age and college age, are you able to give an opinion as to the likely effect of this material on normal average human beings of high school age or younger? A. I think so.

797

Mr. Hassell: What was the answer?

The Witness: I think so.

Mr. Hassell: "I think so"?

The Witness: I am willing to alter that and say I am.

*By Mr. Bromley:*

Q. Have you examined with particularity all of the Varga girl drawings in all of the eleven issues, and are you familiar with them and the verses accompanying them? A. Yes.

798

Q. Now, will you tell me whether or not in your opinion you found anything in those pictures and verses which is obscene, lascivious, lewd, filthy or indecent? A. No, I didn't.

Mr. Hassell: I object to an answer to this question. This witness obviously, by reason of the fact that his particular experience, as indicated in his answers to the questions thus far, is not qualified to furnish a helpful reply to such a question as that asked.

*Herbert W. Smith—for Respondent—Direct.*

I think I can recall to the experiences of each member of this Board the fact that during his early youth and adolescent life he did not make it a practice, nor did his associates make it a practice to parade opinion respecting sex and his attitude towards sex to his school teachers. I don't think this witness is qualified, and I don't think the testimony that is proposed to be adduced through him will be of any value whatsoever on the issue here involved, and at this point, before this witness was produced, I failed to renew my motion to the testimony of the preceding witness.

799

I would like to have it understood that I object to all this sort of opinion testimony respecting this material we have here, and I would like to enter a general motion that the prior witness' testimony be stricken and that all of the testimony up to this point be stricken as to this witness.

800

Chairman Myers: The motion is overruled.

Mr. Bromley: Will you read the question?

(Question read.)

The Witness: I have not.

801

*By Mr. Bromley:*

Q. Now, in your opinion, Mr. Smith, is there anything in those drawings that would stimulate sexually impure thoughts in the classes of youth which you have referred to?

A. May I ask whether the question refers to the Varga drawings specifically or all the material?

Q. I am referring now only to the Varga drawings and all of them in all the eleven issues. A. In my opinion, it would not.

*Herbert W. Smith—for Respondent—Direct.*

802

Q. In your opinion, is there anything in any of those Varga drawings or verses which would have a tendency to corrupt morals of youth? A. On the contrary.

Q. By the answer "on the contrary", you mean what? A. That is a question I should like to answer at some length, if Your Honors will permit.

Chairman Myers: Go right ahead.

803

The Witness: I mean something specific there. The policy of education for at least the last fifteen years has been to do everything that could be done to free young people from the idea that the body itself was necessarily obscene or anything to be ashamed of.

The drawings as presented in Esquire, in my opinion, do not present the body in such a way as to make it obscene, shameful, but, indeed, tend rather to idealize it.

Under those circumstances, it seems to me that they perform a valuable function.

*By Mr. Bromley:*

804

Q. Now, sir, in your opinion, is there anything in the drawings or the verses which would tend to lower the standards of right and wrong of youth, so far as regards sexual matters? A. I think there is some variation in the different drawings. I would rather answer with reference to the individual drawings on that question.

Q. Can you answer this question generally: Is there, in your opinion, anything which would tend to stimulate impure sexual thoughts in any of the drawings or the verses?

A. No. I think there is not.

*Herbert W. Smith—for Respondent—Direct.*

Q. Now, will you open the January issue to the collection of 12 Varga drawings and comment on the question which you said you would have to look more specifically with regard to? A. May I have the question read?

805

(The record was read as directed.)

The Witness: As the question is phrased I can answer it without looking at the individual drawings. The crucial words are right or wrong. I think there is nothing in the pictures which would tend to lower the standards of right or wrong.

Mr. Cargill: Will you speak a little louder, please?

806

Mr. Bromley: Will you please read that answer, Mr. Reporter?

(Answer read.)

*By Mr. Bromley:*

Q. Now, will you make what comments you desire in support of your opinions, taking up the 12 pictures in the January issue as briefly as you can? A. Yes. The first of these pictures is obviously of a girl who is by herself, thinking of her absent lover in the innocent sense of the word. There seems to be no suggestion of anything else. He has given her the possession he is proudest of, she has given him her affection. I fail to see anything that would be even suggestive in the evil sense of the word.

807

Q. The possession of his is the medal to which you refer?

A. The possession is the medal.

In the February picture again you have a figure as fully revealed as convention allows. The verse that goes with it again makes it clear that the girl is thinking of her

*Herbert W. Smith—for Respondent—Direct.*

808

absent lover and longing for the time that they can go on with the dreams that they have had.

Mr. Cargill: Doctor, when you say "dreams", what do you mean by that?

The Witness: I would expect they were dreams of married life and the future. She says:

"February makes me dream  
Of castles in the air,  
The castles that we'll live in  
When it's over over there!"

809

That would seem to point directly to the fact that she is thinking of the man she is engaged to or hopes to be engaged to, and, when the war is over they will go on with their lives.

Shall I go on?

*By Mr. Bromley:*

810

Q. I only want to give you the opportunity, Doctor, to make comments as to such of these drawings as you said you desired to, if any. A. I think it would be worthwhile—unless you wish me to comment on every drawing—I think it would be worthwhile to explain what I meant by saying I thought the drawings varied, although I did not think any of them would affect adversely the sense of right and wrong.

I am sorry, there was another of the Varga girls I had in mind, not one of this series, and I will take that up when we come to it later, if I may.

Q. Now, will you take up the next item in the January



*Herbert W. Smith—for Respondent—Direct.*

issue, which is the "Star and Garter Blues" review, by Seldes, on page 83, particularly on page 119.

811

Do you find anything in that article as a whole which, in your opinion, is obscene, lewd, lascivious, indecent, or filthy? A. I do not.

Q. Do you find anything in it which, in your opinion, would tend to corrupt morals or lower standards of right and wrong in youth? A. I do not.

Q. Now, proceeding to the cited material, have you examined page 6, the excerpt from the Army paper? A. I have.

Q. What is your opinion with respect to that article and particularly the references to Esquire in the first paragraph and the two references to juking, further down in the two columns? A. The reference to Esquire in the first paragraph clearly indicates that the writer, represented as a private in the Army, thinks of the cartoons in Esquire as having some sex content.

812

The reference to juking also clearly has some sex content in it, it is defined so specifically.

The definition in the paragraph at the bottom of the first column "juking is something Woodhead thought up which puts sex, dancing, manners, drinking and risqué behavior in one package" obviously has reference to sexual matters.

813

Q. Now, in your opinion, and from the standpoint of youth, does that make the references lascivious, obscene, lewd, filthy or indecent? A. It does not, no.

Q. Would it tend to have any adverse effect morally upon the classes of youth with which you are familiar? A. It would not.

Q. Is this magazine in any sense a banned magazine in your school or any of the schools with which you have been connected? A. No.

*Herbert W. Smith—for Respondent—Direct.*

814

Q. Do you know whether or not the pupils in your present school have access to it in the school or outside the school? A. In the school, so far as I know at the present moment, not, unless individuals bring it in.

A year or two ago, however, we did allow the students to have and furnish for themselves a room to be used as a recreation room, and they brought in chairs, magazines and books, and one thing and another, and many of the magazines brought in were copies of *Esquire*.

At that time it never occurred to the parents or faculty or the administration of the school that this magazine should be banned.

815

Q. Did you ever receive from a parent or associate instructor or board of directors, any complaint about the fact that this magazine was displayed in the recreation room of your school? A. No.

Q. Did it ever occur to you that this magazine should be taken up and proscribed? A. No.

Q. Do you think now it should be proscribed, sir? A. I do not.

Q. I say "proscribed", and not "prescribed". A. I noted that, sir.

816

Q. Will you now look at the verse on page 45, "*Benedicts Awake*", and I direct your attention to the opening line of each of the three stanzas which Mr. Hassell has emphasized, being "*Men sleeping besides your wives, awake!*"

What is your opinion of that poem? A. I have read the poem as a whole and it seems to me rather a good poem, certainly not a poem which would in any way be susceptible of any obscene or filthy interpretation.

It is a statement which I am sure has already been brought out adequately in this room, of the fact that happy married life is being interrupted as men are being drawn into the

*Herbert W. Smith—for Respondent—Direct.*

armed services. It is a fact that is tragically obvious to a great many of the young people whom I have known best.

817

It seems to me that the poem is in good taste and is a rather fine piece of work. I don't think it is great literature.

Q. In your opinion, would it have any morally adverse effect on youth? A. On the contrary, I think it is of great value to youth to hold before them the possibility of fine sex relations in marriage.

Q. Keeping in mind this first sentence "Men sleeping besides your wives, awake", would you comment, for the benefit of the Board, what is customary instruction for youth of high school age in a play such as Hamlet, or other Shakespearian plays? A. That is a rather sweeping question.

818

Q. As much as you care to comment on it, A. Hamlet is or was, four years ago, when a survey was made, the most commonly read book in preparation of college admission.

In the play of Hamlet, as I am sure you are aware, the strained emotional relations between Hamlet and his mother and the unfaithful conduct of his mother are very clearly and explicitly portrayed, so that it is almost impossible for any boy or girl to go through high school without having attention drawn to marital relations.

Hamlet explicitly urges his mother to absent herself from the incestuous bed of his uncle, and the language is most explicit.

819

Q. And does that have to be explained to students of high school age, who are studying Hamlet? A. It seldom has to be explained, but it is called to their attention.

Q. Does the word "whore" occur in Shakespearian plays? A. Frequently.

Q. Does it occur in the Bible? A. Frequently.

Q. Do educators generally make any attempt to ban the

*Herbert W. Smith—for Respondent—Direct.*

word "whore" from the references there referred to? A. Not even in books prepared for school use.

Q. Do you think the printing of the line "Men, sleeping besides your wives, awake?" would have any greater tendency to coarsen or shock or deprave than the references in the play of Shakespeare to which you have just referred? A. I do not.

Q. The reference on page 123 to that column of jokes entitled "Dear Doctor Diddle". What have you to say with respect to the suggestive interpretation which I understand Mr. Hassell has made with respect to the word "Diddle"?

A. I don't know. I was not present on his examination.

Q. I am sorry. Do you know whether the word "diddle" is contained in the dictionary? A. I do not.

Q. Do you know what its meaning is? A. I know its meaning in the connections with which I have heard it.

Q. What is it? A. It means to act trivially and with no outcome, to diddle around. I can give a quotation, as I recall it, from a college student who said: "I wish we wouldn't begin French early in our school year because when we begin it we should begin it systematically and not diddle around with it."

Q. Now, do you see any obscene or lascivious connotation in the use of the word "diddle" alone or in connection with anything in that column? A. I do not.

Q. Is there any joke in the column which to you is indecent or has a filthy connotation or has any sex connotation of any kind? A. The second unquestionably has a sex connotation.

Q. What is the second? A. The second is "Dear Doctor Diddle: I am a beautiful brunette, but I have a serious problem. Every time I take a bath I blush. What shall I do?"

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"Dear Twenty: Before you undress, put on a blindfold."

The point of the joke is, as I construe it and as I believe most of the boys and girls with whom I come in contact with would construe it, is that the beautiful blonde is unduly disturbed at the sight of her nude body when she takes a bath.

823

Q. Is there anything indecent about it? A. No, but you didn't ask me that.

Q. I do now. A. No, there is nothing indecent about it.

Q. Does that have a tendency to adversely affect the morals of youth? A. On the contrary. I am looking to be sure. Well, there is one other.

824

Q. What is it? A. That has some sex content.

"Dear Doctor: I am a lady 40 years old. I have been married to eight different men in seven different countries. Please tell me what I have to look forward to. Anxious."

Mr. Hassell: Where is that?

The Witness: That is the fourth in the last column of page 123 of January, 1943.

"Dear Doctor: I am a lady 40 years old. I have been married to eight different men in seven different countries. Please tell me what I have to look forward to. Anxious."

825

"Dear Anxious: I'm not positive about what you have to look forward to, but, lady, you sure have a hell of a lot to look back on".

Unquestionably, that suggests a good deal of sex experience.

*By Mr. Bromley:*

Q. Is there anything indecent or obscene? A. On the contrary.



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826 Q. In it? A. No.

Q. Now, will you turn to page 137, the cartoon? Do you find in that any obscenity or any tendency to corrupt morals or lower standards of right or wrong? A. I do not.

Q. What is the basis of your opinion? A. What I construe to be the point of the joke is what I believe the young people, I know, would also believe to be the point of the joke.

827 Q. What is it? A. That a man who is outside, possibly in the cold, certainly in the night, is looking down into a warm and cozy studio where art students are drawing, presumably from a model, wishing that he also were in the presence of a pretty girl and drawing her, instead of on the roof, looking.

Q. Now, will you turn to the February issue? I want to ask you generally in the February issue, based on your examination and study, whether you found anything in the material complained of which is obscene, indecent, lascivious, lewd or filthy? A. No, I have not.

Q. Have you found anything in the magazine which, in your opinion, would tend to corrupt morals of youth, lower their standards of right and wrong, or stimulate impure sexual thoughts? A. I have not.

828 Q. Look at the Varga girl picture on page 34 and see if that is the one you wanted to make some special comment about. A. No, that is not the one. What I said about the others will apply to that.

Q. I direct your attention to page 65, the Sultan cartoon, "What am I bid for this 100 pounds of sugar?" What is the basis of your opinion with respect to that cartoon? A. My opinion with respect to that is that the attention, the point of the joke, is directed to the incongruous juxtaposition of the idea of rationing and the idea of selling a slave in an



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Oriental slave market. That point is made by the double meaning in the use of "sugar", which is unquestionably slang for a very attractive girl and is also the literal word for a commodity which is rationed and hard to get now.

829

Q. You mean juxtaposition of American slang and an African slave market, Mr. Smith? A. No, I mean presenting the ludicrous use of rationing which was the current American situation; applying that to the Oriental slave market. It was that juxtaposition that I meant.

Q. Now, will you turn to page 77? Have you read the entire story "Home Sweet Ruby Street"? A. Yes.

Q. Have you studied the picture at the bottom of the page? A. Yes.

830

Q. Especially in the light of the text which appears at the left-hand side of the picture? A. Yes.

Q. What is the basis of your opinion with respect to that text and picture to the effect that it is not obscene or morally detrimental to youth? A. I think that is a rather different category from the other things we have been discussing before. I think very few of the students that I know, if any, would read the story in the first place. I think the illustration is not by itself either attractive or salacious. I don't think that the text is easily comprehended, so I don't think the two would be likely to be put together. If they were put together, I still think that it would be sordid and in bad taste, but I don't believe that it would tend to corrupt morals of youth or to make them believe that the extra-marital sex relationship implied there were attractive.

831

Q. At page 95 reference to those parts of the story regarding The Unsinkable Sailor, what is the basis of your opinion with respect to that material? A. I don't think that can be discussed as a whole. Shall I take it up individually?

Q. Take it paragraph by paragraph. We have had pointed

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832 out in the first paragraph, by Mr. Hassell, the reference to Las Palmas. A. Of the establishment known as The Black Cat?

Q. The establishment known as The Black Cat and the fact that the subject of the story was a contact man at one time in his life for that establishment. A. I think that is clearly implied, and I think that a reasonable proportion of the high school boys and girls would realize that it was, but I think the context in which it occurs, "The less said about that phase of his life, the better", there is nothing unduly stimulating about it.

833 Q. You think the reference would be clearly interpreted by the average youth as the fact that it was a house of prostitution and the fact that the subject had worked there? A. I wouldn't say that.

Q. What would you say? A. I would say that there would be a considerable number to whom it would be clear, but I don't think it would be the majority of high school students. On the other hand, I don't mean to imply for the moment that that minority should not be protected.

Q. Now, with respect to that minority who would understand it, do you think that that would tend to corrupt their morals? A. No.

834 Q. Or lower their standards of right and wrong? A. No.

Q. Or do you consider it would be obscene as to them? A. I do not.

Q. The next reference is in the third paragraph, where the word, "sonovabitch" appears spelled phonetically. What is the basis of your opinion that there is nothing obscene about that? A. The fact that the word occurs so frequently in current fiction, which they are fairly sure either to have read or to have heard when it is presented on the talkie movie screen. I think that that is an instance of a word which would have

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been regarded as filthy some years ago, but which at the moment—I am thinking of, for instance, such books, of course, as *Grapes of Wrath* or *Of Mice and Men*, by Steinbeck and Hemingway, which are commonly read by high school students. I don't think that that is any longer a filthy and obscene word. It is a rough word and a word in bad taste.

835

Q. Do you know that it is the policy of many of our newspapers today to print the word out and spell it correctly?

A. I think so and I have seen it in the *Chicago Tribune*.

Q. The next reference to which Mr. Hassell and the Department objects is contained in the third column, which speaks about the bottle and the sample which the sailor had to leave in the hotel manager's safe when he left town. Are you familiar with that? A. I am.

836

Q. What is the basis of your opinion as to that? A. I think very few high school students would understand the reference. Very few of them have had the experience of leaving a sample of urine. I think some of them would know what it referred to.

Q. Now, with respect to them what, in your opinion, would be the effect, if any, on their moral standards? A. None. I think they would either think it was funny or disgusting, but I don't think it would affect their morals and standards at all.

Q. The next reference is that where the subject of the story goes into the union hall where there is a new secretary and he utters the words: "How's chances to lower the boom on you, sister". Have you read that? A. Yes.

837

Q. And then in the same paragraph, several sentences later, it is explained that while it shocked and frightened the girl, it was only the sailor's way of asking her for a couple of dollars. What is your opinion with respect to that paragraph? A. That again applies to a somewhat different cate-

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838 gory than the other paragraph we have been discussing, because the paragraph creates, I believe, an ambiguity, and one of the possible answers to that ambiguity is an improper one. On the other hand, it doesn't direct attention to that any more than it does to the one which is perfectly innocent. I am perfectly sure that a good many high school boys and girls would be aware of the ambiguity and would be interested in the fact that a completely innocent interpretation was put on it.

839 I can amplify that by giving you an incident which occurred rather recently, when a boy in a senior high school class spoke of the bee as attacking the flower and there was a ripple of amusement that the word that should be used was an ambiguous word which was in the public print and the daily paper, associated with criminal assault and sexual contact, but I don't believe that the knowledge of that ambiguity would be a new thing to them or would be a thing that would in any way affect their standards of right and wrong.

840 Q. Now, in the March issue there is an advertisement on page 9 of the Thorne Smith novels by the Literary Guild of America. What is the basis of your opinion with respect to the contents of that advertisement? A. That applies to a kind of advertisement that might, it seems to me, the Post Office could object to reasonably on the ground that it promised more than the goods delivered. It has been customary ever since the time I was in college to advertise Balzac and de Maupassant as if they were salacious books, and I think the advertisement is rather misleading and contains a hint of being salacious books, not all of which I have read. I have read one or two of them.

If you mean do I think the advertisement in and of itself might corrupt youth, and if you are referring to the subject which is being covered, I don't think that that will have any effect on them at all.

*Herbert W. Smith—for Respondent—Direct.*

Q. Are those books lascivious books? A. Well, I haven't read all of them.

841

Q. The ones that you have read. A. The ones that I have read certainly are not.

Q. Now, are they banned by any organization from the mails? A. Not to my knowledge.

Q. I notice a reference in the descriptive texts to one of the books named Topper. Are you familiar with that? A. Yes, I have read Topper.

Q. Is there anything lewd, indecent, lascivious, obscene, or filthy about that book? A. Not to my knowledge.

Q. Do you know whether or not some movie company made a movie of that story? A. I don't know that. May I add one word about Topper, since you mentioned it?

842

Q. Please. A. Years ago it was not lewd or lascivious in its connotation to those young people. Well, our board of trustees is curiously conditioned and frequently gives out opinions which carry weight in the community. One of the ladies has as the family nick-name for her husband, Topper, and she and the children refer to him in that connection right along, so an allusion to Topper in Thorne Smith is certainly not in the mind of the family, or even what is promised here, revelry.

Q. Now, looking at the cartoon on page 49, another Sultan cartoon, tell us the basis of your opinion with respect to it, please. A. I think that again the point of the joke is similar to the joke in the other Sultan cartoon. It is a juxtaposition of two ideas that are not ordinarily together or that do not ordinarily appear opposite each other. A very familiar sort of humor. One is the idea of getting a birthday present, of having an Occidental slave girl given to him for a birthday present, and the other is the idea of sugar and rationing. It is perfectly possible that I missed the point of the joke, but the point of the joke is, it seems

843



*Herbert W. Smith—for Respondent—Direct.*

844 to me, incongruous. The humor is due to the juxtaposition of the two incongruous ideas; one, the idea of getting birthday presents as we Westerners do, but the idea of having a slave girl given to one as a birthday present, and that is a ludicrous situation. It doesn't seem to me to be anything but a ludicrous situation.

Q. Now, will you refer to page 68, which is the article by Seldes writing about perfumes and clothing, entitled "The Fall of the Flattering Word". What is the basis of your opinion with respect to that article? A. Well, I was a little at a loss to see why that was in the cited material, because it seems to me to be a factual comment on advertising practices and not an article which had any sexual connotation. Seldes is drawing attention to the paradox of using very extreme and suggestive language by the advertisers of perfume and the fact that advertisers of clothes, which certainly are more ordinarily associated with stimulating the attractiveness, sexual attractiveness of the wearer, is comparatively demure, so it seems to me not in any way likely to rouse ideas that are in any way impure. It is written on advertising practices.

845 Q. Now, attention has been called to the third column where the words "fly-front" are used in connection with the advertising of clothes. A. Yes. Well, again "fly-front" is an instance of something that happens again and again in the use of the words. A word which was at one-time regarded to be taboo and not to be mentioned in mixed society or decent society, presently becomes perfectly innocent, and vice versa words like specifically in Shakespeare you see the use of the word "wanton" is likely to mean nothing much more than a spoiled child, and it is necessary to explain that to boys and girls with regard to showing it is Elizabethan English.



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On the other hand, "wanton", as you know, means an abandoned woman. Accordingly, the change in meaning of fly-front, particularly since the change is in the direction of a more innocent application, seems to me entirely impossible of indecent connotation.

847

Q. Near the end of the second column reference has been made to the first sentence: "Now, it must be a rare odd thing that clothes which do enhance the sexual attractiveness of women are sold to them for smartness."

Can you see any immoral connotation in that sentence?

A. No. If the clothes do not enhance the sex attractiveness of women they would not be bought. We cannot try to deny that clothes do enhance the sexual attractiveness of both men and women, at least it is the hope of the buyer and of the advertiser that they believe it.

848

Q. On page 107 there is a hill-billy cartoon, with the subtitle "Seems like somebody's allers clammerin' to somebody to open up a second front, don't it?"

What is the basis of your opinion with respect to that cartoon? A. Well, again I think the cartoon is one that is in bad taste and not very funny, but I don't think it is obscene from the point of youth, of the high school boys and girls that I know. To them it is a hill-billy cartoon of a hill-billy annoyed and commenting on the fact that the other child wants to be nursed at the same time. If what is complained of is the sight of a woman nursing her child and that it is indecent or obscene, I do not agree with that suggestion at all.

849

Q. There are many, many of those hill-billy cartoons published in all sorts of publications? A. Yes.

Q. And have been for many years? A. Yes, and ballads about them, also.

Q. Have you any comment to make with respect to the Varga girl? A. No, that is not the one.

*Herbert W. Smith—for Respondent—Direct.*

850

Q. Now, in the April issue the Varga girl is on page 38. Have you any comment with respect to her or the verse?

A. No.

Q. Look at the front cover. A. Yes.

851

Q. The Department says that that is obscene because the breasts of the two dummy models are over-emphasized. What is the basis of your opinion with regard to the character of that cover? A. The character of that cover doesn't seem to me to differ materially from the character of the other covers. I don't like the covers of Esquire; I think they are in general rather cheap, but my objection to the covers on Esquire is much more to the bulgy eyes of Esqy and the implication that he is looking for everything unpleasant that he can see rather than to the caricatures of the dummy. The dummies are obviously caricatures; they are not meant to look like human beings. You will notice there are other features of the female figure that are emphasized, the eyes are far more distorted in proportion to the actual size of the eyes than the breasts are.

Q. You don't like the covers? A. I don't like the covers.

Chairman Myers: I always thought that Esqy ought to be examined or changed.

852

The Witness: On the other hand, I don't think that this point of view is rendered unattractive by the covers for the boys and girls who wish to read Esquire.

*By Mr. Bromley:*

Q. You know, Mr. Smith, you are supposed to be on our side. A. That was your risk.

Q. Will you turn to page 60, an article on "The Court of Lost Ladies", by Edmund Gilligan? A. Yes.

*Herbert W. Smith—for Respondent—Direct.*

Q. What is the basis of your opinion with respect to that article? A. My opinion of that article is that it is surprising to find it inside these covers, because instead of being a flippant and facetious article, it seems to me a very fine and serious study of a very important social problem.

853

I can't imagine anything that is better for these young men to have, these men who are going to the Army immediately, than to have as careful and artistic a study of the consequences of impure social behavior as this is.

It seems to me in every way an admirable story. May I say one word more in that connection?

Q. If you will say it to the Board. A. The only character there who is in any way rendered admirable is the Judge who is made a very fine and admirable figure. For the rest, the story is that the wages of sin are disease and death.

854

Q. Now, sir, in the May issue, the Varga girl is on page 38, and I call your attention to the comic strip on pages 86 and 87, and ask you to state the basis for your opinion with respect to items 29 to 32, inclusive. A. Yes, sir. I don't like the cartoons any better than I do Esky's appearance on the outside of the magazine, but again I fail to see anything that is suggestive of improper behavior or likely to corrupt the morals of boys and girls who might happen to see it.

Q. Does that include the text as well as the picture? A. It includes the text as well as the picture.

855

Q. Have you read, on page 32, the article "The Savage Beast In Us," by Paul Gallico? A. Yes.

Q. What is the basis of your opinion with respect to that, including the illustrations? A. I think the illustrations are disgusting, and I think they are meant to be disgusting.

I think, however, that they must be construed in connection with the text which they are supposed to illustrate. That text is a report on the burlesque type of show and the report-

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856 ing is certainly not such as to maintain the attractiveness of the show—quite the reverse.

Q. Mr. Hassell read from the second column of the article two paragraphs which you considered to be obscene, near the bottom:

"The 'bump' appears to be a violent twitch whereby the artiste gathers up all of the area immediately south of the chest and hurls it in the general direction of the audience, aimed at hitting some man, in the fifth row, right between the eyes.

857 "The gesture is held to be fraught with aphrodisiac significance, a sure fire yank on the hair-trigger that is supposed to control the beast in us. Oh, yeah?"

Do you see that immediately following the paragraph he read this morning? And there follows this paragraph:

"Outside of the fact that the movement is awkward, un-rhythmic, and hideous to behold even when backed by an orchestra of symphonic proportions, it just won't work as a beast-rouser. What it makes me think is that some gent in the company, having somehow achieved invisibility, has stolen up behind the danseuse and administered a good swift kick *a derriere*.

858 "The sight of an entire stageful of coryphees performing this gesture, as is sometimes arranged by dance directors under the impression that it is Hot Stuff and will sell tickets, is enough to ruin the *apres-midi* of any faun."

Taking the whole reference, as I have read it, do you find anything obscene in it? A. It seems to me it is objecting to the burlesque and holding it up to ridicule and is not obscene in itself.

Q. And this reference: "The supposedly sultry 'grind' in which the performer revolves her hips in time to music while the rest of her stands still, may have practical value as a

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slimming exercise, but performed in public and by herself I must report that from the viewpoint of the average susceptible male the results are negative. On the contrary, it has undeniable comic aspects. A lady engrossed in delivering herself of these revolutions, her face transfixed with the curious false stare resulting from the muscular effort reminds me of nothing so much as a gal who has backed herself up against a tree or a wall and is attempting to scratch an itch she can't reach."

859

Is there anything obscene about that? A. No. It is coarse and coarsely put, but it is not obscene.

Q. And the last paragraph of the article which was not read this morning, I desire to call your attention to as follows:

860

"I trust that I have faithfully exposed my argument: that Broadway flesh-peddlers think they're putting on hot shows, they have another guess coming, and if guardians of the public morals are worried about me and the other guys becoming corrupted by those dull, imbecilic, puerile gyrations over which they are currently exercised, they can quit worrying, because it just ain't so."

Now, what comment, if any, have you to make with respect to the whole article? A. I would like to call attention to one other part of the article, if I may, the paragraph beginning:

"It is bad enough when these poor, chilly looking monkeys are marching about, or merely trying to sing a song in unison. I will not touch upon the caricatures that occur when, thus clad, they engage in tap dances or acrobatic numbers," and so forth.

861

It seems to me the net effect of the article is critically stringent and antiseptic rather than the opposite.

Q. Will you turn to page 48, the cartoon? That is the one, is it not, in which the two air raid spotters are looking at



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862

night, and one of them, through glasses, and the sub-title is "She looks more like a B-17 than a P-40." What is the basis of your opinion with respect to the character of that cartoon?

A. It seems to me, ordinary, without any tendency to produce impure conduct or to change for the worst the standards of right and wrong.

I hate to use a formula, but it is difficult to say these things and not have to follow a pattern, the same pattern.

Q. Do you think the average child or any child would think the airplane spotter with the glasses would be looking through a window in which the shade was up? A. I think that is clearly the implication.

863

Q. And the child might think the man was looking at a woman who was undressed? A. There is nothing to change that assumption.

Q. Well, make that assumption. Do you find anything obscene about it? A. May I say one word on that point?

Q. If you say it over that way (indicating the Board). A. I never knew a man to object so much to being talked to.

864

I would like to say, with reference to this type of joke, this type of cartoon, that it consists of leaving a blank which the person himself can fill in and, accordingly, it is susceptible of many interpretations.

It seems to me that my criterion in saying that a given cartoon is obscene or not obscene, is whether the attention is directed primarily to the worst of the possible meanings.

Now, even in this case, even if it seems to a high school youngster that two men on the roof were looking through a window at an undressed figure, it still does not seem to me that it would change their standards of right and wrong or make them likely to be more indelicate themselves.



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Q. Now, I call your attention to page 92 which is the picture from "The Eve of St. Mark," and the accompanying text on the opposite page being "The Juke Joint Scene from the Eve of St. Mark."

865

What is your basis of opinion with respect to the character of that material? A. I think that illustration has to be construed in conjunction with the text that goes along with it.

It says at the outset:

"These soldiers have just come from a discussion of a hygiene lecture in which it was estimated that in the Army 20 percent don't, 20 percent do, and 60 percent might."

866

It concludes by saying that these boys—one of them—belonged to the 20 percent who don't, and the other had to go along with him because he had the money and was taking the lead.

The picture, looked at in the light of that text, is obviously a picture of two boys in the forces who have been out in the evening with two town girls, but who got home without having had any immoral relations with them.

Q. You know that the Eve of St. Mark is a play by Maxwell Anderson which has enjoyed a tremendous run in New York and has been seen by hundreds and thousands of people, don't you? A. I do.

867

Q. And you know that is merely a report of the dialogue which accompanies that scene between the two soldiers and the two girls in the juke joint? A. I do.

Q. Do you think there is anything obscene or indecent in a magazine of general circulation reporting scenes which have gone on on our public stage for a number of years in plays of high literary value? A. No.

Q. Now, coming to the June issue, the Varga girl appears on page 34. A. That is no exception to the others.

*Herbert W. Smith—for Respondent—Direct.*

868 Q. The next reference is on page 134 which is that article about the rough western editor and what he published in his newspaper.

What is the basis of your opinion with respect to it? A. Will you give me the page again, please?

Q. 134, in the middle, "Libel Suits." A. Yes, I have it. I assume the reason for pointing this out as being obscene is the epitaph "Here lies the body of poor old Charlotte," and so forth. I think it is a coarse jingle, but I do not believe it is likely to corrupt the boys and girls who read it.

869 The context of the article is that this is an editor with the roughest style who handled it, and this is an instance of the rough style of handling.

There is one further thing I ought to speak about, and that is the second paragraph in the second column: "In the future, all communications to the Muldoon will be marked—"

I call your attention to that because it seems a clear indication of the importance of the context. I read that at least four times without realizing at all the vulgar point of the joke, and I think unless it is read aloud or in what is called double talk, that is, the twisting the meaning of the words, you simply won't see the point of it.

870 At least, I didn't.

Q. Suppose they do see the point of it? A. It would not affect the standards of right and wrong.

I have already spoken of Hemingway and Grapes of Wrath and Of Mice And Men which are familiar reading. They are also fairly sure to see such plays as Dead End and come in contact with such language.

Q. The word "ass" appears in print in respectable literature, doesn't it? A. It is in Lawrence of Arabia.

I would like to qualify that answer, if I may. It does

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not ordinarily appear in that sense and, correctly spelled, in books that boys and girls read.

871

In that respect it is quite different from such words as "bawdy" and "whore" which do.

Q. Assume this is equivalent to having printed the word, is your opinion of it as to its obscenity the same? A. No. I think if the word were printed fully it would seem to the boys and girls I know as obscene.

Q. What about the use of it as made here, the use of the asterisk? A. That does not seem to me obscene in the sense about which we are talking about it here, because of two facts.

872

In the first place, I doubt if any of them would understand it and, in the second place, those who did would be the ones who were looking for that kind of thing, to whom it would be no news.

Q. Now, in July there is a colored photograph from "By Jupiter" on page 76, and Mr. Hassell has called particular attention to the degree to which the low-cut show gown exposes the breast and the degree to which she has lifted her left leg.

Noticing those two features, particularly, what is the basis of your opinion that there is nothing obscene in that picture? A. The amount of exposure of the body in those photographs—

873

Mr. Hassell: What issue are you on now?

Mr. Bromley: July.

The Witness: On page 76. That amount of exposure of the body is customary in advertising and other illustrations.

*Herbert W. Smith—for Respondent—Direct.*

*By Mr. Bromley:*

874

Q. That, again, is a scene of five show girls from a Broadway play with Ray Bolger, which has run for many, many months, sir, isn't it? A. I don't know.

Q. Look at the advertisement, page 146. Attention has been called to the middle postcard with the Varga girl stretched on her stomach with a hat over her back.

What is the basis of your opinion with respect to that picture? A. In the first place, I don't think it is likely to be noticed at all, and even if it is, it doesn't involve any indecent exposure.

875

Q. On page 87 we have the second and last so-called comic strip. I call your attention to items 55 and 56 and ask you to state the basis of your opinion with respect to those two parts of the strip. A. It would seem to me the only possible objection to them, except for the general objection to strips, comic strips, on the ground that they are cheap, is the nudity of the torso, the ambiguity of the text, "There's something I've always wondered about mermaids."

876

The figure is only remotely human, anyway. That way of representing mermaids in comic strips goes back to one I remember looking at as a boy called the "Voyage of Captain Nemo," or something of the kind, and the implication in saying "There's something I've always wondered about mermaids," here is again a case of the blank you can fill in in your own way, and half a dozen perfectly innocent and perfectly reasonable meanings for any one obscene meaning I can think of that anyone would be likely to attach to it.

Q. Assume the worst meaning that you can attach to it. Is there anything obscene about it, in your opinion? A. I think that is not a question you can answer. You assume

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the worst possible interpretation that can be put on anything and, of course, it is obscene, but that does not seem to be an assumption I usually make in dealing with boys and girls.

877

Q. What I am trying to get at, and I don't seem to be doing it gracefully, is: Does the fact that Mr. Hassell contends that that might refer to the ability of a mermaid to have children or have intercourse, change your opinion with respect to the character of the strip? A. No. I am glad to answer that categorically. It does not. It is impossible in presenting material to the general public, and even to children, to guard against all possible obscene interpretations that might be placed upon it.

878

In this instance it seems to me that no attention whatsoever is directed to any possible obscene meaning.

Q. Now, the poem on page 141, "Dog's Worst Friend," has been pointed out as filthy because of the last lines of the poem:

"I would like to plant them in Central Park  
In a long row  
And introduce a lot of dogs to them."

A. And the possible interpretation is that dogs can defile their graves. I do not think it is either obscene or filthy.

879

I think, again, current practice must be referred to. In movie after movie reference is made to the hydrant. These children see continual reference to dogs urinating, and it seems to me there is no obscenity involved. Obviously the man is writing coarsely his condemnation of people who abuse dogs.

Q. To page 148, the cartoon at the bottom. That's the one with the two perfume signs displayed side by side.

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880 "Burning Desire," and "Baby's Breath," with the sub-title "I think, Miss Hill, it might be advisable to display those a little farther apart."

Will you give the basis of your opinion with respect to this cartoon? A. A juxtaposition of incongruities. I think what incongruity there is is between a mere juxtaposition of incongruity using such an absurdly exaggerated phrase as "burning desire" alongside of a very innocent one such as "baby's breath." And the only thing that could involve any sex at all is that one is cause and one is consequence, and even that doesn't seem to me to be obscene.

881 Q. In the August number the Varga girl is on page 38. A. That is not the one I referred to.

Q. And page 36 has an article "Many Wives Too Many," to which reference was made by Mr. Hassell this morning.

What is the basis of your opinion with respect to the character of that article? A. The article seems to me to be discussing a proposal of Dr. Joad to the effect that the terrific shortage of men after the war might be corrected by polygamous marriage.

882 The article is making fun of that by pointing out that from the point of view of the average man the absurd and impossible consequences of following it out. I don't see anything remotely obscene in that.

Q. Reference has been made particularly to the second column beginning "In figuring out a schedule for a six-wife batting order" and going to the middle of the third column.

I wish you would look at that particularly and see if you see any reference there which could possibly affect your opinion. A. I do not.

Q. On page 31, in the left-hand column, beginning "Rosa-mund," reference is made to all that column. Will you



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examine that? "Rosamund—the wife to make love to" and so forth. Does anything there, to which I have directed your attention, change your opinion? A. No.

883

Q. Now, on page 65 there is a cartoon, and opposite it on page 66 there is a cartoon. A. I don't find any cartoon on page 65. I am confused.

Q. I withdraw that and ask you to direct your attention to page 73, the color photograph "Mood for Red Hair." A. I have it.

Q. What is the basis for your opinion with respect to that picture? A. It seems to me that is in no way either suggestive or obscene. It is an attempt to use the color camera for artistic purposes compared with those obtained by oil.

884

Q. Suggestion has been made that the drapes over the girl's arms, chest, and stomach, have deliberately been so arranged that a beholder would inevitably mentally seek to remove them.

What is your opinion with respect to the reaction of a child or a youth with respect to those drapes, or the way they are placed? A. I don't see any remote suggestion to them.

Q. Turn to page 90. That is the girl in the wedding gown who is working at the lathe. The sub-title is "She came directly from the wedding—Boy! that's patriotism."

885

What is the basis for your opinion in regard to that? A. I see no reasonable likelihood of a lewd inference being drawn from it. These boys and girls are familiar with the need for women workers; they hear over the radio and they see the urgent requests for them.

The inference, it seems to me, that the average high school boy or girl would be likely to draw from it, is that fun is being made of the urgency of the appeal. And the girl is a little patriot to go to work before she changes her dress.

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886

Of course, there is another inference that could be drawn.

Q. What is the other inference? A. That she goes to work in the shop before the marriage has been consummated.

Q. Is there anything dirty about that? A. No, I don't think it would occur to the average high-school student.

Q. Suppose she went to call up her mother before it has been consummated? A. The same.

Q. Now, look at the "Paste Your Face" cartoon. A. That is one of the series and if looked at closely does not seem to me obscene. That is the picture I should most regret finding in all the cited material.

887

I would like to explain my reasons for saying that, and I still say that I don't think it is obscene or likely to cause the moral standards of boys and girls to deteriorate.

I think the picture, like somewhat similar pictures without the paste-in feature in *Life* recently, suggests an unwise degree or imprudent degree of close contact between young men and young women, and, accordingly, I think it is an undesirable picture to place before young people.

I do not, however, believe the picture is obscene in that it does anything more than that.

888

In other words, I think it suggests that it is a perfectly acceptable type of thing to do, to have a girl in a bathing suit carried on the shoulders of the young man, and I think that is not a desirable thing for high school students to be encouraged to do.

I think also that from a first look at it you get a more startling effect because the white space there makes you think the girl is entirely unclothed. But if you look closely at it you see something quite different.

I would like to say a word more about the place of that picture in a series. It was, as you called to my attention when talking this material over, sir, one of a series in

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which the service man was supposed to paste his face and use this as a sort of joke. 889

I think that that does affect the construction that should be placed on it, but I repeat it is a picture I am sorry to see placed in a magazine that is made easily accessible to high school boys and girls.

Q. I show you the other two pictures in the series. A. That is what I have reference to.

Q. The girl on the left has the same blue bathing suit that the girl has who was sitting on the shoulders of the sailor in the August issue? A. Yes.

Q. We had a little discussion with Mr. Hassell as to whether in the August issue she had a bathing suit on. Doesn't the picture I show you, that I hold in my left hand, make it perfectly plain? A. What page is that, please? 890

Q. 89. I haven't any doubt but what that is a bathing suit on page 89. Do you have? A. Oh, no.

Q. And do you see it is the same bathing suit as the other?

Mr. Hassell: And the same waves and same ocean, counsel?

Mr. Bromley: By the way, you said there were no waves. Are you changing your mind? 891

Mr. Hassell: I think that anyone would reach that conclusion.

The Witness: May I put in a word for the lake in the Middle West?

Mr. Bromley: You think it is a lake?

The Witness: Well, I am from Chicago.

Mr. Cargill: Did the witness express himself as to wheth that picture was obscene?

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892

The Witness: I said it was not obscene. I thought it was an injudicious picture to put before young people because it would tend to produce undue familiarity but not obscenity.

*By Mr. Bromley:*

Q. On page 105 is a cartoon with the title, "Thank God, help at last".

What is the basis for your opinion with respect to that?

893

A. Again, what seems to me the point of the joke is it would appear to high school boys and girls that the rather frail, ship-wrecked white man is outnumbered by large and gleeful colored girls.

It doesn't seem to me it would be construed any farther than that by high school boys and girls, as I know them.

Q. Will you turn to page 110, which is another cartoon entitled "That is Miss Blinpton, our special nurse for low blood pressure patients."

What is the basis for your opinion about that cartoon?

A. That cartoon is satirizing the well-known fact that almost all boys and men like to look at a pretty girl.

894

It is exaggerating the shapeliness of the legs, the dress is a little shorter than the present average, the breasts are clearly outlined, but it doesn't seem to me to be obscene.

Q. Do you see any filthy connotation in the use of the word "Blinpton" as referring to her breasts? A. No.

Q. Is the picture made obscene by the fact that the old gentleman's hat is blowing off his head? A. No. That is part of the satire of masculine susceptibility.

Q. Or the pleased look on the face of the interne or the man talking with the doctor? A. Certainly not.

Q. Turn to page 127, if you please, the fashion page, which has the sub-title "Hew to the line, Bertha. Let the

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skirts fall where they may". That is the girl painting stockings on the girl lying on the sand.

895

What is the basis for your opinion of that? A. I don't think that is intended to be a joke at all. It is simply an illustration of the way in which stockings are being painted on, and the girl says to the other girl who is doing the painting, "No matter how high you have to paint up the leg, go ahead and paint the stocking on."

Q. Is it of a type that is common in fashion magazines, or wouldn't you know that? A. As far as I know, but I don't know very much about that.

Q. Page 144. Have you read the article "Offensive on the Home Front"? A. Yes, I have.

896

Q. When I say "article", I mean story. A. Yes.

Q. Two places near the end have been pointed out as obscene. In the third column near the bottom it has been pointed out that the reference "Once he had slapped a prostitute in Bordeaux who had persisted in keeping his cap, but that didn't count," is obscene. I direct your attention to that. A. I do not consider the use of the word "prostitute" to make it obscene. In writing, a reformed prostitute is the principal feminine figure in *Mice and Men*, if I am not mistaken, and in Shakespeare the equivalents, strumpet and whore, are frequently used, so that in and of itself is not obscene even to young people.

897

Q. Is the reference in the next paragraph, where the author says:

"He noticed how large the uniform made her behind look" obscene in your opinion? A. No, I think that is coarse and intended to be coarse; but the whole story obviously portrays a revulsion against the silliness of the opposite sex. That has been done repeatedly in literature and in literature that is read commonly by high school students.



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898

Chairman Myers: Suppose we recess at this time for about thirty minutes.

(Thereupon, a brief recess was taken.)

899

Q. Will you state the basis of your opinion with respect to the Sultan cartoon on page 43 of the September issue, subtitled "Sold American", please? A. Yes. Again the point of the joke, the thing that is in the center of focus for the person that reads it is the incongruity of an American boy going to an auction and doing what I daresay his mother has done at home: Finding everybody else bidding and bidding for an article that is going to be embarrassing after he has got it. It seems to me that is the primary point.

900

Q. Will you answer the same question with respect to the cartoon on page 65, sub-titled "Come back later, sweet—my wife hasn't left for the factory yet". A. Yes. That seems to me to have two points. One, it is the man bites dog point. That is the inversion of the usual situation where the old ice man joke, of course, implied that the ice man liked to call and pay attention to the wife, and here it is the milk girl who presumably would like an uninterrupted call with the husband if she came back later because the wife had gone to work. It is primarily because of the statement "my wife hasn't gone to work—left for the factory yet", implying that she is a war worker.

Q. On the next page, the cartoon with the sub-title "It's the only time daughter and her young man have for courting—they both work nights in a war plant." Will you give us the basis of your opinion on that? A. Well, the incongruity there, of course, is with the rather violent petting going on in the daytime, and there is also, I think,



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a certain amount of humor in the understatement, in apologizing for both of them who are courting in the day time, and in thinking it necessary to apologize for their rapt embrace in which they are engaged. Those, it seems to me, are the two centers of focus. 901

Q. That is the mother who is the second of the two women, isn't it? A. I inferred that, yes.

Q. And the next cartoon is on page 84. A cartoon with respect to the same subject. Will you give me the basis of your opinion with respect to that? That is entitled "Every night he tells her he's sailing tomorrow." A. Well, the source of humor, it seems to me, is different there. The source of the humor, it seems to me, is in the cynical way in which the boy who is going to sail eventually makes the girl more affectionate by calling attention to the fact that he is going to leave her soon, and I was rather interested in the fact that Shakespeare wrote a sonnet on precisely the same subject. I won't quote the whole sonnet, but he says to the girl, "Don't worry about the fact that I am older than you. The fact that I am going soon is the reason you should treasure me more." 902

Shakespeare put it:

"That time of year thou may'st in me behold,  
When yellow leaves, or none, or few, do hang". 903

Now, it is not to be used for humor in Shakespeare, but there you have the same thing because the boy is telling the girl he is sailing tomorrow in order to get a larger degree of demonstrative affection which he is not entitled to, but I don't see anything in the fact that this is not the girl he is going to marry or there is anything lascivious in the cartoon in that connection.

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904 Q. The inference is that the two adults are the father and mother of the girl, is that it? A. Yes.

Mr. Cargill: May I interpose a question?

Mr. Bromley: Yes.

Mr. Cargill: In this testimony is this opinion that you are expressing now, as to the effect it would have on the minds of school children between the ages of four and twenty?

Mr. Bromley: Yes.

Mr. Cargill: Or is it his personal opinion that he is giving? I am just asking for information.

905

Mr. Bromley: I don't blame you, because my procedure has been a departure from what should have been done. I asked the witness if it was his opinion that this material would affect the boys and girls with whom he comes in contact and he said he found nothing in it that was obscene or would corrupt morals. I am assuming that that answer applies to every one of these things and it is related especially to youth. Instead of repeating those questions which would have been too tiring, I was asking him not to repeat his answers in the same light but to expand further on them.

906

The Witness: That is the sense in which I have been construing my answers also.

Mr. Cargill: All right.

Mr. Bromley: All right.

*By Mr. Bromley:*

Q. Now, on page 86 we have a double page spread of jokes from Army papers entitled "Goldbricking with Esquire"

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The matter that is complained of starts at the bottom of the first page, with the first joke, and it is the one about the two babies in adjoining cribs, one a boy and one a girl, and they talk to one another, and they ask whether they are a boy and a girl, and the boy says "As soon as the nurse leaves I will show you", and when the nurse leaves he pulls up the covers and says "See, blue booties". Do you recall that one? A. Yes.

907

Q. What is your opinion with respect to any effect of that on youth? A. Well, I don't think it would seem obscene to youth because there is nothing wrong from their point of view in two people of the same sex comparing any parts of the body. I think the point of the joke is, of course, a substitution of a very secondary characteristic, blue booties for babies, for the primary sex characteristics.

908

Q. Well, these are two babies of opposite sex, aren't they? A. I beg your pardon, I read carelessly and misconstrued entirely. May I re-read?

Yes, the situation is of a different sort, that they are going to compare people of an opposite sex, and again it is a matter of substituting at the end, but with a much less innocent implication than I had in mind. I still wouldn't call it lewd, lascivious or obscene from the point of view of the boys and girls, but it is rather innocent.

909

Q. One other joke is at the bottom of page 87.

"She: Would you like to see where I was operated on for appendicitis?"

"He: No, I hate hospitals."

What is the basis of your opinion with respect to that?

A. Again, I think the point of the joke is the surprise reply and not the suggestion as indecent exposure, because I don't think it seems indecent to boys and girls any more than it is to men and women to expose the area in which an appendix scar exists.

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910

Q. Now, the cartoon on page 102. What is the basis for your opinion with respect to it? The sub-title being "Ain't it a damn shame? Plenty of water on this island, plenty of food, and now I get hallucinations". A. Well, I can't answer why that was cited unless it was implied that a girl lying on her back in a bathing suit was by definition too provocative. She certainly is not lying in a position that would suggest what might be called any sex play, and I do think that the point of the joke is perfectly obvious. He simply cannot believe that there is a girl there, just that this is too good to be true.

911

Q. She is in a bathing suit? A. She is in a bathing suit, and she is completely covered, as much as the girls do when they go swimming.

Q. Now, turning to the Varga girl in the October issue on page 43. A. That is not the one.

Q. I call attention to page 49, which has the fuel salesman cartoon. "Hello, dear, this is the gentleman who sells us our fuel oil."

912

What is the basis for your opinion with respect to that cartoon? A. Again it is a matter of a general context in society. It is obvious that the meaning of the cartoon to young people would be no different than what it is to older ones. That is, that the wife finds it necessary to bribe and flatter and cajole and caress a person through whom they can get fuel oil, but the humor of the thing is in the idea that you can't get fuel oil unless you go as far as that, rather than unusual sex conduct.

Q. Now, on page 56, there begins this piece of fiction "Portrait Above the Fireplace". Have you read that? A. I have.

Q. What is the basis for your opinion with respect to this article? A. It seems to me an entirely serious study of

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the effect of the unknown portrait on the young man who buys it when he has apparently no future before him, and who is inspired to succeed by what he imagines is his mother, only to find that it is the portrait of a keeper of a house of ill fame.

913

There does not seem to me to be anything in that that would be obscene or suggestive. The mention of a house of ill fame is not—he certainly is not in any way stimulated by the previous connections of this portrait that he admires. It is perfectly clear to those young people that even a prostitute is a person who is capable of redemption and through whom redemption could come.

914

Q. Will you turn back to page 37 in your October issue. I am skipping around out of order by mistake, and will you look at the cartoon in the lower right-hand corner, being one of a sailor with the tattoo on his arm, and the hula-hula girl looking at it. What is the basis of your opinion with respect to that? A. Well, it seems to me not to have any other connotation or any other meaning to the girl or boy who looks at it except he has the trick of vibrating his arm and making this hula girl look as if she were doing a dance, and the girl who actually does the dance seems amazed at the miniature reproduction moving about and performing the trick, so to speak.

915

Q. Do you find anything obscene in that? A. I do not find anything obscene in that at all.

Q. Have you read the article on page 38 "Wise Men Pick Pyknic Girls"? A. Yes.

Q. What is the basis of your opinion with respect to it? A. Again, it seems to me to be a popularization of a theory of two types of women and not to be in any sense considered indecent or inelegant or provocative.

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916

Q. You find in it reference and repetition of the word "bust" in connection with the measurement of the Pyknic type at the bottom of the fourth column on page 38 and running over on page 39? Does that connote anything lewd or lascivious? A. No, because I am sure if these boys and girls see it, lewd or lascivious means directing your attention to things that are not there, not spoken about, and not seen, and bust measures and references to busts are completely familiar and completely familiar even in this kind of connotation.

917

The measurements of the Atlantic City beauty girls are always completely given in detail in mentioning them, and I see no greater reference there than there is in other measurements that are given.

Q. Turning to page 93. I believe there are three jokes complained of reproduced here from Army papers. The first one is on page 93 in the first column ending "Liquor is my weakness".

What is the basis of your opinion with respect to it? A. The ridicule is directed to the person, the prostitute who tries to accost a man and is told "You have no attraction for me." I don't see that that is in any way affecting adversely the standards of right or wrong of the boys and girls.

918

Q. Right below it is the joke about the negro Pullman porter which ends "If dem shoes stickin' out from under the bed ain't got no feet in 'em, ah is gonna shave."

What is the basis of your opinion as to that joke? A. Well, again, the humor is in the implication that if there is a man under the bed "I will attack him with a razor", but the humor consists in drawing the inference from the perfectly ordinary statement "Well if everything is all right, all I am going to do is shave".



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Q. Finally, the joke in the last column: "What does f-e-e-t spell?" And the ending: "Johnnie's answer was as surprising as it was unexpected."

919

What is the basis for your opinion there? A. The point of that joke seems wholly different in character than the others and the attention of the reader and the boys and girls would certainly understand this is directed to the discomfiture of the teacher in having a word ordinarily applied to animals applied to her. The implication, of course, is that the answer will be teats, instead of feet, but the substitution does come from mentioning the unmentionable. Teats are mentioned in all conversations about cows. The humor consists in the unexpectedness, in applying to a human being the word that is only associated with other animals.

920

Q. Now, will you turn to the November issue? The Varga girl is at page 46 in that issue. A. Yes, that is the girl that I had reference to. Shall I speak about it?

Q. Yes. A. The reason that I thought that Varga girl was not as wise to have in a magazine easily accessible to young people was related to what I had said previously about the attempt of educators to free boys and girls from an undue feeling of shame in connection with the body itself.

I am not talking about the body as displayed in suggestive or unpleasant circumstances, and both the verse and the picture itself suggest that the girl is surprised presumably until the end of the verse.

921

I am referring specifically to the use of "Wolf" and that implies some man who would be predatory in his approach. It is only at the end that you are told that her alarm was due to the mouse.

Well, the implication that there is anything indecent about how the girl will react, it seems to me is exactly

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922 parallel with that of the other pictures. I don't think, however, that this is indecent or obscene, but the thing I spoke about in the other pictures as having a greater prophylactic value does not apply to this, because specifically the girl is ashamed in being in the condition that she is, at least you think she is until the very end of the verse.

Q. Now, will you turn to page 66, the cartoon and subtitle: "It's no use, Sarge—we're outnumbered—Yippee!"

923 What is the basis for your opinion with respect to that material? A. That seems to be entirely innocent, but the point of the joke is that here are some soldier boys that would not resist being taken prisoner by a lot of attractive girls; a fine thing to look forward to.

Q. On the next page, the one entitled: "At the U. S. O. in New York they just gave us cigarettes", a picture of a soldier smoking a water-pipe in the presence of a harem girl.

924 What is the basis of your opinion with respect to that? A. Well, I think most boys and girls would draw the inference that I did when I looked at it, and that was that the inference was that between the water pipe and the cigarette and not just letting them smoke and possibly entertaining them with the services of an Oriental slave and sex relations after, and I am by no means sure that any boy or girl would draw that inference, but I am sure that that is what was cited and that inference was expected.

Q. Now, on page 73, the color photograph "Golden Mould", what is the basis of your opinion with respect to that? A. Again, it is the attempt to use the camera and color photography for the kind of beautiful pictorial effect that has obviously been possible only with oils heretofore. It seems to me the picture is entirely free from any objectionable construction unless any picture of a pretty girl is

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objectionable. I find no suggestion, no exaggeration of the sex characteristics.

925

Q. Now, will you go back to page 52, which is another Sultan cartoon entitled "Such a neighbor—always borrowing" and tell us the basis for your opinion with respect to that picture? A. Well, that seems to me very closely similar to the auction picture. That is, you import into the Oriental situation the custom of neighborly borrowing, which is one of the most innocent and natural customs among us Westerners, and by putting it into the Oriental environment, where it is the matter of borrowing wives or concubines, you produce the effect here of comic incongruity, but it seems to me that is not an obscene or indecent thing to show; merely shows the incompatibility, the incongruity, of the two different standards of behavior.

926

Q. Now, on page 60 there is another color photograph from a night club, the Folies Bergere. What is the basis of your opinion with respect to it? A. Well, that again is a piece of photographic reporting. I don't think of night clubs as places that boys and girls should habitually go to. I wouldn't think of a magazine filled with that sort of illustration as very acceptable and suitable for boys and girls, but I wouldn't think that an occasional picture of this kind appearing in a magazine of general circulation will be obscene or will tend to lower their moral standards.

927

Q. Now, turning to page 77, which is this monthly theatrical critical column, written by George Jean Nathan, and I believe it appears in every one of these issues, objection has been made to paragraph one, in which he mentions a St. Louis sporting house in connection with his objection to a scenic set on a stage which features a large and elaborate staircase.

What have you to say with respect to the basis of

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928

opinion as to that photograph? A. Well, if the sporting house had been reported as made attractive to young people, I would say it is obscene, but it is not. It is merely illustrative of the bad taste of the kind of interior set that Mr. Nathan is talking about, and the mere mention of a sporting house or bawdy house is something, as I have said before, that does not seem to me to tend to lower the standard even of high school boys and girls.

Q. Will you answer the same question with respect to paragraph number 10, to which objection has been taken?

929

A. Yes. It seems to me again that Nathan is objecting to precisely what I would object to. That is, to the stupidity and bad taste of introducing two actresses dressed to look like prostitutes.

Q. That has reference to "young floozy characters"? A. The "young floozy characters wearing short skirts", and so forth.

Q. You agree with Nathan? A. I agree with Nathan. That, of course applies to all of this.

Nathan is condemning things that are coarse and in bad taste.

930

Now, may I add that if Nathan were making a pretense of condemning them for the purpose of describing them elaborately, the Ciceronian trick of saying, "I will not describe them to you" and then going ahead and doing so, that in my opinion would be an entirely different matter. It is perfectly plain that he is giving us illustrations of the kind of things to which he objects and the article is very strongly on the moral side rather than on the immoral side.

Q. Is that true of paragraph 15? A. Yes.

Q. In which he says: "Any more plots about someone who mistakes an innocent institution for a bawdy house, or vice versa". A. That is very true, also.

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Q. And is true of paragraph 21 in which he quotes what one of the boys from Dead End says with respect to "den don't gimme any a dat crap"? A. Yes. This applies there also and the very fact that it appeared in Dead End and it was seen all over the country makes it completely impossible that the quotation itself should produce the effect that he is deprecating.

931

Q. Now, on page 83, we have a cartoon of the two girls conversing, with the sub-title: "My date's at the awkward age—all hands and no dough".

What is the basis of your opinion with respect to that cartoon? A. Well, again the drawing is not a pleasant drawing but the advice is excellent: Keep your hands off girls, don't paw them. If you want to take them out and show them a good time, spend money on treating them, but don't pet.

932

Q. Now, look at page 89, and answer the same question with respect to the circus picture of the clown and the two girls. A. Well, that is again a matter of reporting, and if you have a magazine with dramatic criticism and undertake to review the plays, it seems to me impossible to allow the play on the stage and to refuse to allow a photographic report in a magazine. The kind of play that I don't think is particularly good for young people, but its attractiveness is not enhanced in any way.

933

Q. The text shows clearly that that is a photograph of two performers and a clown from the Ringling Brothers circus? A. Yes.

Q. At the entrance to the Big Top? A. Yes.

Q. Now, will you turn to page 94, which is again a two page spread, "Goklbricking with Esquire", and to which a great many objections are made. I know four is the first one. That is the joke about the corporal who was going



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934

home on a furlough, and finds two girls in his berth and says: "I am sorry, one of you girls will have to leave".

What is the basis of your opinion with respect to that joke? A. Well, the main point of the joke seems to me to come from understatement. He says: "One of you girls will have to leave." It seems to me impossible that any boy or girl old enough to read that would think that is implied that the other should stay. That the expectation of the reader is clear, of course, both girls will get out, but he says: One of you girls will have to leave. The humor of the understatement is perfectly familiar in English literature since early days.

935

Q. I ask you the same statement with respect to item 15, which says: "Don't fool yourself. He doesn't suspect a thing." A. Well, the only point that I see in it here that I think high school boys and girls would see in it is that the phrase "knows everything" implies that he knows discreditable things about the wife.

It is again a matter of filling in the blanks to suit yourself, with no indication whatever that an obscene meaning is meant.

936

Q. And item 24 again is a joke about the soldier home on furlough and says to his girl: "Slimmer, aren't you?" And then at the end: "Where do I start?"

What is the basis of your opinion with respect to that? A. Again he is calling attention to the fact that she said something which she didn't mean.

Q. Do you see anything obscene in it? A. I do not.

Q. At the bottom of that column is the joke about the Army hostess who went in swimming and she was confronted by a soldier looking at her and the soldier's remark: "You're thinking that pan's got a bottom in it".



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What is the basis of your opinion with respect to that one? A. Again, I think the point of the joke, and the point to which the attention is directed, is the ironical contrast between the whole story and position that the woman is assuming when she thinks ~~she is~~ entirely covered, and the very vulnerable position that the soldier calls to her attention that she is in when she thinks she is partly covered.

937

• Q. Now; here is an Army joke that is very close to your experience: "Have a good time at the party, daughter dear; and be a good girl."

"Make up your mind, mother."

What have you got to say about that? A. Well, I heard that joke in one form or another for at least thirty years and it doesn't seem to me to be even a joke by this time.

938..

Q: You understand this magazine is only reprinting this. A. I am not criticizing your editorial policy in that respect.

Q. Now, the second from the bottom of the third column, the one about the private who says to the girl: "I'm afraid we can't have much fun tonight. All I have left of my pay is some small change." And the girl answers: "Well, how much do you think it takes to send my kid brother to the movies—a five dollar bill?"

What have you to say about that? A. That seems to me absurd to read an obscene meaning into the desire of the young man and a young woman to get rid of a younger brother or sister. I am speaking now not as a principal of a school, but as a father of four children.

939

Q. And the one under it ending up: "It ain't against regulations to undress, lady."

What have you to say about that? What about that one? A. Again, there is no implication whatever that the lady doesn't have a bathing suit on. If you wish to imply that he is talking to her when she is indecently exposed.

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940 that is a matter of the obscenity of your construction of it and not a matter that is in print.

Q. I don't construe it that way, Mr. Smith. A. I am just warning you against it.

Q. Now, will you give me your opinion with regard to the joke: "You're sure there are no soldiers around here" underneath the picture of the girls in the water. A. Well, I don't think it is much of a joke.

Q. What? A. I don't think it is much of a joke and the girls are entirely covered. I don't see anything in the picture where there is any indecent exposure.

941 Q. And, finally, the joke of the woman who went swimming and heard one and spoke up and the answer: "79, darn it".

What is the basis of your opinion with respect to that? A. Well, that is again in the 30 year old class.

Q. Now, I find I skipped unintentionally one article in the October issue at page 104 entitled "The Sporting Scene", which is about the war worker girl who took a vacation and every time she tried to perform some athletic sport she had some man come around and kibitz her, and she got mad and went home, and then she got married and had 21 children, and then told her husband that now she doesn't have to take any more advice.

942 What is the basis of your opinion with respect to that story? A. It seems to me that the lady was entirely right. That was one point on which advice could not be given by the amateur.

Q. Having examined all the cited and specified material in all of the issues, in your opinion is the cumulative effect of the cited and the specified material in those issues such as to render all or any part of it obscene, lascivious, lewd, filthy or indecent? A. I would like to answer that very

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fully and frankly, and if the rules of procedure make my answer such as it would be stricken from the record, I haven't the slightest doubt that the chairman will strike it out from the record.

943

Mr. Cargill: You may feel perfectly free to say whatever you want to and talk as long as you want to.

The Witness: Thank you, very much.

I would like to give an answer to that question.

I think that the effect of the magazine to be considered in view of a complete context, that is, context of the magazine itself and the circumstances under which the boys and girls that come in contact with it are likely to see it under the present rules of the Post Office Department circulated like any other magazine. They are likely to encounter it in the home, in the dentist's office, in the beauty parlor, if the girls go to get permanent waves.

944

It is a perfectly open and obviously easily accessible publication.

It would seem to me that even if you put the worst possible construction on all the material that is in there that you would increase any possible harm that might be done if you made it less freely available and still did not stop its publication.

945

I am talking now from the point of view, as I say, of the boys and girls with whom I deal.

I think these younger people feel differently than we older ones, primarily, about the standard of what is accepted and what is not, and I think with reference to the boys and girls that it would be a damaging thing to have a public ruling to the effect that

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946

the girls presented in that way were in and of themselves obscene. That is the very ruling itself that would bar this from circulation in exactly the same way as the other magazines were circulated, and that would tend to make mischievous what previously was entirely innocent or at the most only slightly objectionable.

Now, I hope I haven't gone beyond the point of the question. You were asking me the cumulative effect of the magazine when it was mailed out.

947

Chairman Myers: You say that if we try to take it away from them, then they will get it anyway?

The Witness: Yes. While I was at Harvard there was a time, for instance, when there was no doubt that the student editors of Lampoon tried to get the college to suppress a number because it would greatly enhance the value of the number, and my colleagues never suppressed the number.

In other words, if this were entirely stopped from publication, it would simply have the effect, which would be worse than it would be otherwise, of interfering with its present free circulation.

948

*By Mr. Bromley:*

Q. One final question. You don't think it ought to be stopped from circulation? A. No, I certainly do not. I see no reason.

Chairman Myers: In your experience in the field of English literature, is it your view that that kind of cartoon or satire is at the bottom of most humor?

The Witness: It is very much my view, yes. This

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juxtaposition of two images that are not ordinarily associated with each other.

949

Mr. Bromley: That is all.

*Cross Examination by Mr. Hassell:*

Q. Professor, with respect to the last volunteered statement you made. A. Yes.

Q. Isn't it a fact that a magazine such as this, by reason of the subsidy it enjoys from the Government and the approval of its publication or circulation by a department of the Government charged with that duty, if such a situation occurs and that subsidy makes up the difference between profit and loss, would you have any different view from that you just expressed about it? A. No, I don't see that I should.

950

Q. Professor Smith, the school with which you are associated is a private school, is it not? A. That is correct. The current word is independent rather than private. Private has fallen out of use.

Q. Well, the pupils who attend that school pay a fee for attending it? A. Some do and some don't. That is, we have a fairly liberal and extensive policy of scholarships, as colleges do to those who are in need of it.

Q. Is your school largely patronized by children of wealthy people who don't want to send their children to public schools? A. Predominantly, but not by any means exclusively.

951

Q. Predominantly? A. Yes.

Q. Are the public schools in Chicago so inferior that wealthy or substantially wealthy people don't want to send their children there? A. This is hearsay evidence, I haven't investigated the public schools of Chicago, but as I talked



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952 with parents and asked them why they are interested in joining their children in my school that is the reason they give us.

Q. How many pupils do you have in the school you are the head of? A. About 375.

Q. That number matriculates each year? A. No, not all. In the school all together there are about 375 boys and girls.

Q. That is the total enrollment? A. The total enrollment. That varies from year to year, of course.

953 Q. Now, in your position as head or headmaster of this school, do you find that the boys and girls of all ages come to you and confess their sexual peccadilloes and their secret vices and so forth and what influences them in committing them? A. It varies very much with individuals, of course. Some do not confide at all and some confide very intimately.

Q. Would you say that most of the pupils going to your school voluntarily confide their secret vices to you and what influences them to those secret vices? A. I can say certainly not.

Q. So, as a matter of fact, Professor, you do not know whether these pupils, largely or a majority of them, or a substantial portion of them, are influenced towards secret vices by what they see in this magazine, do you? A. I cannot give you any evidence but merely my opinion.

954 Q. I am trying to get at what your opinion is and on what it is based. A. My opinion is based on the statements of those whom I do know best, but I have no reason to assume either the existence of secret vices or the fact that they are or aren't stimulated by any outside agency.

Q. You know, as a matter of fact, that ninety or more per cent. it has been stated that 99 per cent of men, and the 100th per cent is a liar, has at times masturbated? You know that? A. I have heard it stated.



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Mr. Bromley: You are pushing it up, Mr. Hassell.

Mr. Hassell: Well, I am not relying on the preceding witness' conclusion. 955

*By Mr. Hassell:*

Q. Do you know anything about that, whether there is any truth in that? A. I would have no knowledge of the proportion.

Q. However, these people who have confessed to you actually confessed their secret vices and told you in detail about them and what led them to do those things? A. Again, some have and some have not. 956

Q. Let us be a little more frank as to that. Just what proportion of your student body ordinarily does that? A. Well, it is not the usual relation. I am trying to answer you just as fairly as I can. It is not the usual relation of school child and principal or teacher that the child habitually confesses vices to. I mean, the relation differs entirely from that of the priest and the person who comes to confession so that you are quite right in implying that it is not the large majority who come forth for the purpose, as you put it, of confessing their vices.

Q. Now, Professor Smith, coming to your own children with you as their father, have you received confessions of their secret vices and what impelled them to commit them? A. Yes, I think so. 957

Q. You think so? A. I will tell you why I use the words "I think so": I wouldn't describe those talks such as you use your word "confession", nor would I of my own choice use the words "secret vices", but they certainly have confessed about actions that I think—they have made statements about actions that I think you would characterize as

*Herbert W. Smith—for Respondent—Cross.*

958 confession and you also used the words "secret vices" and then implied a sort of habitual indulgence that I would not include in my statement. That is why I could not answer your question categorically yes or no.

Q. But out of your enrollment in this school, how many children voluntarily seek you out and confess to you their secret vices and what impelled them to carry on those secret vices? A. If you will substitute the word "misdoing", because I am not sure about the word "secret vices".

Q. Well, let us be plain, masturbation. A. No.

959 Q. How many of your pupils come to you and tell you that they masturbate? A. No appreciable number of the children in the school come to me and tell me that.

Q. You say no appreciable number. How many does that mean? A. Not any more than about one or two in several years; a very small number.

Q. A very small number? A. Yes.

Mr. Hassell: At this point I move that the statement of this witness be stricken. It is obviously of no value whatsoever.

Chairman Myers: The motion is overruled.

960 Mr. Hassell: I would like to reserve with respect to this witness and all similar witnesses, that the fact that I am undertaking to cross examine him does not imply that I have waived my objection.

*By Mr. Hassell:*

Q. Professor Smith, how long have you been at this Francis W. Potter? A. Francis W. Parker, P-a-r-k-e-r.

Q. Parker, I beg your pardon. A. I am afraid as a New

*Herbert W. Smith—for Respondent—Cross.*

Englander I don't have any proper way of pronouncing "r". My father, who is like you, a Carolinian, told me about that. I am just entering my sixth year.

961

Q. Prior to your employment there, Professor, where were you? A. I was the head of the Fieldston School in New York City.

Q. How long were you the head of that school? A. I was associated with it either as head of the school or head of the so-called ethical high school. The school merely changed its name when it moved to the suburbs. I was head of the English department for twenty years.

Q. Now, the Fieldston School was similar in character to the Parker School? A. Except that my own responsibility did not extend below the seventh grade. When I was with that school the only other exception in the nature of the school, the Fieldston School, was really that the school was run by a religious sect much as the parochial school is by the Catholic Church. In other words, it was not an entirely independent organization as the Francis W. Parker School.

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Q. Now, you have referred, Professor, in your direct examination to matter appearing in the January issue under the editorial "Pep Talks to the Tune of 'Easy does It'."

The material on that page headed "Shor Nuff."

Are you sufficiently familiar with the magazine, Esquire, to be able to tell us whether the description or the characterizations in the first paragraph to the effect that "Esquire, the four-bit magazine which is always busy as a little beaver sandwiching good advice between its spicy cartoons" is a correct description of the magazine? A. No, because the word "always" would prevent me from saying whether that was fair or not. I have seen very little of Esquire, except, as I say, in such places as the dentist's office. I have not been a subscriber to or a regular reader of the

963

*Herbert W. Smith—for Respondent—Cross.*

964 magazine, so I haven't any idea as to whether that is a correct statement of what the magazine has always been.

Q. Now, with respect to those issues of the magazine which you have seen, would you say that that is a correct characterization of it? A. Yes.

Q. And the spicy cartoons referred to are such cartoons similar to those and perhaps those cartoons about which you have testified to here on direct? A. They certainly would include those cartoons.

965 Q. In your testimony with respect to those cartoons, you did not refer to them as spicy. Would you call them spicy now? A. So far as I know, I have never referred to any cartoon as spicy.

Q. You would not use that word? A. I would not use that word.

Q. You know what the word means or the implication of the word? A. The implication of the word is that they are sexually provocative, but may I make my answer full enough to be sure that I make my meaning clear?

Q. Yes. A. When I say "sexually provocative", I don't mean that they are provocative and imply impure sexual conditions.

966 Q. Now, in the fourth paragraph, first column, down towards the bottom of this article, we have this statement:

"The test is divided into nine sections. Companionship comes first, with 105 points, followed by intelligence, 90 units, and disposition with 80. Comes it then breeding (no, not that) which scores 50."

Do you have any idea what the implication is there with respect to breeding, "no, not that"? A. Well, I am sure that the implication there is for an adult, and I would include in that probably every person in this room, and that probably means the idea of reproduction, but I don't

*Herbert W. Smith—for Respondent—Cross*

believe that it would mean that to the boys and girls I associate with. I think they would think the parenthesis was a meaningless one. 967

Q. They would miss the point? A. I think they would miss the point. May I add to that that I think that if they did not miss the point it would not be a very serious matter anyway.

Q. Now, at the top of the next column in this article it is stated: "The pay-off on what kind of a guy this Woodhead is comes quick. He figures a gal's dancing ability is worth 20 points. Sex he gives 10".

"The pay-off". Would you say that there is an implication there that he meant that he rated this fellow Woodhead as a dead one because he doesn't rate sex very high? 968

A. That seems to me a fair inference to draw from it, yes.

Q. Now, at the bottom, number 7 in the tabulation, juking:

"a. That's right. Just what you're thinking about. 400".

What would you say that reference is to? A. I think that the reference is to the fact that juking is not a word in general circulation. I never saw it outside of this particular passage, but it is obviously one that has been defined in the parenthesis, bottom of the column:

"This is something Woodhead thought of which puts sex, dancing, manners, drinking, and risque behavior in one package." 969

Q. So, sex is involved? A. Sex is clearly involved. May I add that I don't think there is any implication that sex conduct is involved.

Q. You wouldn't think any sex misconduct was involved if this article applied to the appraisal of association after marriage, would you? A. Well, it does. It clearly says that the whole purpose of this is to decide whether you want to marry the girl.

*Herbert W. Smith—for Respondent—Cross.*

970 Q. So you would have to be able to appraise that— A.  
Exactly.

Q. (Continuing): —ability? A. Yes.

Q. Before you married her? A. Yes.

Q. That wouldn't be any improper— A. No.

Q. (Continuing): —sex implication? A. No.

Mr. Bromley: Are you suggesting that that means they must live together before they get married, Mr. Hassell? I don't think the witness answer construed it that way.

971 Mr. Hassell: I think he answered it.

The Witness: I did not construe it in that sense.

*By Mr. Hassell:*

Q. Does the school maintain a library? A. Yes.

Q. In which current magazines are displayed? A. Yes.

Q. Or available to the pupils? A. Yes.

Q. You don't have Esquire there? A. No.

Q. Referring, Professor, to the article by Gilbert Seldes on page 83, "Those Star and Garter Blues", in the center of the second column there is this statement:

972 "A stripper", do you see that down five lines from the bottom of that paragraph? A. Yes.

Q. "A stripper who does an orgiastic dance verges on the erotic". Do you think that the 18, 19, 20 year old boy, or 17 year old boy who saw this and read that advertisement or this show would not be induced to go and see it?

A. Will you read the question?

(Record read.)



*Herbert W. Smith—for Respondent—Cross.*

*By Mr. Hassell:*

Q. The statement here: "A stripper who does an orgiastic dance verges on the erotic." A. Does that constitute an advertisement?

Q. Well, it might be called such. If you don't like the word advertisement, I would say review. A. Oh. It seems to me that that is to be construed in the light of its place in the article, and the article, as I see it, is condemning the whole business of erotic and near erotic exhibitionism.

Q. Professor, have you seen the show "Star and Garter"? A. I have not.

Q. Have you ever been to a burlesque show? A. Not for years.

Q. For how many years? A. I can't answer exactly, if you are going to look at my ticket stubs, but I should say it has been twenty years since I have been to a burlesque show.

Q. That would put you how old? A. Well, old enough so I would be allowed out. I am now 52. I don't think I have been since I was thirty something.

Q. You read this article and construed it to be a criticism or a belittling of this show, the Star and Garter Blues; to discourage people from going to see it? A. I need to look at it a little more closely.

Q. All right. Look at the sub-title, Professor. A. Yes. It seems to me that you are right in directing my attention to that fact, that the sub-title implies that the show as a whole is condemned; that there is only one bright spot in the show.

Q. Do you know anything about the sell-out performance that show has had for some years? A. I don't.

Q. Now, the poem on page 45 entitled "Benedicts, Awake", and a benedict is what, Professor? A. A married man.

*Herbert W. Smith—for Respondent—Cross.*

976 Q. A recently married man is usually referred to as a benedict? A. Not necessarily in popular speech.

Q. You think this is a very good poem and should be recommended to your pupils, do you? A. That isn't what I said. I said I thought that is a very good poem.

977 Q. You don't think that the picture conjured up by the words in the first part of the first verse and the first lines of the last verse is a lascivious, lewd, indecent picture? A. I would like to answer that more fully than with a mere No, because I think that it is not a lewd or lascivious picture, but I think the picture is of the beauty of marriage relations and is one that is invaluable for boys and girls to have. I will go a little further than that, in my own experience, about the time when I was thirty, I very well remember back in the old Boston Latin school days one Henry Penny-packer, who was reading a Greek poem and he came to word "mestus" which is used for hill, a particular kind of hill, a hill rounded, a configuration, and he stopped at that point. He was a man whom we emotionally admired, and he stopped and said: "There is no curve in the world more beautiful than the curve of a woman's breast."

978 That, to me, was almost the first that I ever heard that implied that sex could ever be associated with anything else than filth or obscenity, so I think if boys and girls encounter this poem, and I think if they had met with this reference it may very well have a similar value to them.

Q. You don't think the picture brought to mind:

"Men sleeping beside your wives, awake!  
Awake to gaze longingly, lastingly,  
Upon soft skinned thigh and softer breast  
Revealed by careless gown"

*Herbert W. Smith—for Respondent—Cross.*

that that is lascivious or has any lascivious implications? A. No, I would not. I would like to state a little more fully what I think of that and speak a little more fully of the matter of context. The context of the whole poem is very different from the context when you read it aloud, stopping after each word and separating that from the rest of the poem. Now, if you are asked to read it aloud and emphasize it that way in an English class with boys and girls, in my judgment I should say no. I should say for some of them in that fashion it might have some connotation such as you are trying to bring out; that that might mean to them obscenity and lasciviousness, but I wouldn't allow you to read it that way and in that fashion. It is the context of the whole thing, the essence of the whole thing.

Now, the context here is a very moving context. This deplores the fact of married men having to be separated from their wives and going through all the hardships and dangers, and possibly death in war. I think it is perfectly inevitable that the context is a fine and uplifting one, and in the reverse, when you turn to the passage to which you called my attention, in the last stanza: "Men sleeping beside your wives, awake!

"Awake and seek the sweet caress of lip and arm." If that whole point of what marriage means, as it is known to people, is not to be treated as I think it should be, reverently, in a magazine for general circulation and to which young people have access, I think the possibility of happily married relations is very small.

I wouldn't like to read a line or a few words from something out of "Romeo and Juliet" and in that fashion distort the meaning of the whole thing. It is the context of the whole that matters not just fragments.

Q. But, Professor, this magazine advertises itself on the

*Herbert W. Smith—[for] Respondent—Cross.*

982 front cover as a magazine for men. You know that, don't you? A. Yes, and fine literature was written for men.

Q. You know the reputation of Esquire as being somewhat risque? A. Yes, I think I mentioned myself that I thought the covers were unfortunate because they did somewhat bias the reader, but I don't think it is possible except to an evil-minded person to get anything like a lewd construction out of this poem. You understand I am not being personal in any way.

Q. Yes. A. I was talking generally.

983 Q. Referring to the reputation of the magazine, you say you understand that they have the reputation of being somewhat risque? A. That is right.

Q. You in your direct examination, referring to these poems, referring to scenes I understand from Hamlet, is it your position that the language in literature and apparently accepted in polite society with respect to sex or respecting sex matters is as frank today as it was in the Elizabethan period?

Is that your contention as you state it now, or do you think otherwise? A. I think it is more nearly as frank today than it was 20 or 30 years ago. I think we are now approximately as frank as they were in the Elizabethan times.

984 It is very hard, indeed, to make a statement in exactly the form in which your question comes, but we are exactly as frank. There are certain differences.

I think in some respects we are franker, and in other respects we are not.

Q. You refer to Shakespeare and hold him up as a model of virtue in your testimony. A. I beg your pardon. I do not hold Shakespeare up as a model of virtue.

Q. And reference is made to the Bible and words in the Bible. A. Not by me.

*Herbert W. Smith—for Respondent—Cross.*

Q. By counsel. Do you recommend to your-adolescent and post-adolescent pupils the reading of Shakespeare's "Venus and Adonis"? A. We do not. May I make perfectly plain the connection in which I mentioned Hamlet? 985

I mentioned Hamlet and the editions of Hamlet prepared for circulation in schools as more or less supporting my position that rather outspoken treatment of marital relations was not only customary but practically prescriptive in the literature boys and girls read before they go to college.

Certainly I don't think that the Queen's conduct in Hamlet is a model for them to emulate.

Q. Now, on page 123, Professor, you referred on direct examination to the article under "Ad Libbing with Esquire," and this is the "Dear Doctor Diddle." A. I have it. 986

Q. You defined that word as meaning to act trivially, I believe. A. Or the equivalent. I don't recall the exact phrase.

Q. You were not by any chance referring to the word "fiddle", were you, fiddling around? A. No.

Q. You would say the word "diddle" around meant acting trivially? A. Yes.

Q. Have you ever heard the expression "fiddling" around? A. Yes.

Q. And that means the same? A. Yes? 987

Q. Have you ever heard the word "diddle" applied to the performance of the sexual act? A. No. I have heard it applied as pertaining to cheat, a person was diddled out of something, but not by young people.

Q. Now, turn to page 137, the cartoon showing the bug-eyed air raid warden with fingers in mouth and high-raised eyebrows, gazing through the skylight, and the legend underneath "And to think I gave up drawing."

*Herbert W. Smith—for Respondent—Cross.*

988

I believe you said that that brought to your mind that this poor fellow was out in the cold and looking with longing eyes into a warm studio, is that right? A. I think I used the words "possibly out in the cold."

Q. Is there anything there, heavy clothing, icicles, or anything to indicate cold? A. Both men have overcoats on.

Q. But they have no gloves? A. And they have no earmuffs, either.

Q. But they are not rubbing their hands indicating cold? A. Well, it is not a moving picture.

989

Q. In a cartoon of this sort you could very well represent persons being cold by rubbing their hands, couldn't you?

A. I don't want to obstruct the proceedings; I will concede that. I didn't think the point was that they were out in the cold.

I thought the point was that they were envious of what was going on inside.

Q. And would you judge from the expression on the one person's face and the legend underneath the cartoon that he is seeing something that is giving him great satisfaction?

A. No, I should say he was seeing something that he wished he could be much nearer to. The whole point of it is that he is not.

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Q. Let's turn to page 65. A. Did you say 65?

Q. That is what I have here. Counsel jumped back and forth so as to get me mixed on my numbers.

Mr. Bromley: I can't throw you off that way, Mr. Hassell. I wish I could. It was by stupidity and not by design.



*Herbert W. Smith—for Respondent—Cross.*

*By Mr. Hassell:*

991

Q. It is the cartoon referred to by counsel as the Sultan cartoon, "What am I bid for this one hundred pounds of sugar." A. It is not in this number from my indexing outside. It is in February.

Q. I beg your pardon. Do you think a cartoon for circulation in the United States, referring to the practice of selling women as so much sugar, or as a commodity, is an elevating and uplifting sort of thing? A. No, but I don't think it is the opposite, either.

Q. Do you think that the readers of Esquire might get any indecent implications from that idea, that you could buy a woman like you would buy a hundred pounds of sugar?

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A. I doubt if that would be a novelty to them.

Q. Do you mean that they— A. I am saying it is a perfectly familiar conception of anyone who has read the Arabian Nights, which children read. It is common knowledge that in a good many Oriental countries polygamy is practiced and women are sold.

Q. You say you didn't think the matter of buying a woman would be a novel matter to the readers of Esquire? A. Nor to anyone else.

Q. Page 77, the cartoon and article "Home Sweet Ruby Street." Did you read this article in its entirety? A. Yes. I read it.

993

Q. Do you think it is a humorous article? A. I think it is intended to be. I don't think it is very humorous. It is a rotten joke in the sense of a poor one, not in the sense of an indecent one.

Q. You don't think this article would be of sufficient interest to be read by any of your pupils? A. I do not.

Q. But that if they should happen to read it there would

*Herbert W. Smith—for Respondent—Cross*

994

be nothing wrong in a cartoon purporting to depict two unmarried young people in bed together, or getting up and dressing in front of a stranger or casual visitor, and in front of their parents? A. Of course, the point of the story, as far as it had any, was that this was a social worker who was investigating sordid social conditions, and doing it very badly, so it is not quite fair to describe it as a casual visitor.

I don't think much of the story, but the point is that the amateur social worker is a futile and ineffectual person.

995

It seems to me entirely devoid of harm to young people to let them know that a social worker, professional or amateur, would find sordid conditions in the overcrowded and badly kept up negro quarters.

Q. This article indicates that a social worker, such as you may call Mrs. Finn, derives some enjoyment from looking over the manly figure of the young man who was dressing before her, does it not? A. I didn't interpret it so. I did interpret it that she thought it was getting hot and that was after—I think I had better find the passage. Can you locate the passage for me that you have in mind?

Q. The center of the middle column on page 77:

996

"It was not the response Mrs. Finn had hoped for, and left her at rather loose ends. Thinking it better to begin afresh, she fastened her good eye severely on her notebook and presently flung at Mrs. Vermillion a new leaf, the writing on which seemed slightly furry as her wandering eye, cast presumably in the direction of the ceiling, caught Edna and Radiant gingerly dressing. Radiant, only half clad and suspecting the vagrant eye to be focused on him, winked slowly at Mrs. Finn."

Do you think that is an entirely decent sort of thing to put in an article? A. No, I said that I thought this story—I

*Herbert W. Smith—for Respondent—Cross.*

think it is a story—it is labeled fiction—was a sordid story.

I don't think, however, there is anything like the sordidness or violence of language, or connotation of obscenity that there is in such a play as Tobacco Road.

997

Q. Tobacco Road does not enjoy the second-class privileges does it? A. No.

Q. Page 95, the portion of the article or story "The unsinkable sailor."

Do you say there is nothing obscene, lewd, lascivious, indecent, or filthy in the word "sonovabitch" as used in this article? A. I don't know whether you phrased your question negatively or positively. Do you mind repeating it?

998

Q. Do you say that there is nothing obscene, lewd, lascivious, indecent, or filthy in the word "sonovabitch" as set forth below the center of the first column? A. I say the inclusion of the word "sonovabitch" does not make it lewd, lascivious, and so forth.

Q. Is that word commonly used and commonly accepted among the pupils of your school, Professor? A. No.

Q. And commonly used and accepted in polite society?

A. No. I said I had seen it in the Chicago Tribune.

Q. I believe you stated on direct that you had seen or heard this word used in talking pictures on the screen?

A. I don't think I said that.

999

Q. You don't think you said it? A. I didn't intend to say it.

Mr. Bromley: You said it.

The Witness: I shouldn't have said it.

Mr. Bromley: If Will Hays ever hears that about you he will get after you.

The Witness: I do not recall it. I have seen it in print.

*Herbert W. Smith—for Respondent—Cross.*

*By Mr. Hassell:*

1000

Q. You withdraw that? A. Yes.

Q. Now, the incident in the fourth column of this article on page 95 as described to counsel by you, what the sailor says to the girl, "How's chances to lower the boom on you sister?", you say there is an ambiguity there, a proper inference and an improper inference that might be drawn from that. Is that correct? A. That is correct.

Q. Why do you think that was included in this article; for the purpose of the reader first drawing the improper inference? A. No.

1001

Q. You don't think so? A. No. I think it was included for the purpose of reflecting the girl, as drawing an inference of terror which would include the improper inference, but I do not think it is intended that the reader himself should misconstrue the phrase.

Q. Now, having regard to ordinary, plain everyday English construction, if the writer of that article intended that the improper inference should not first be drawn, why didn't he put the \$2 in to start with? Why didn't he make that explanation before he wrote the other? A. Because that would destroy all point as far as the girl is concerned.

1002

Q. As a matter of fact, Professor, if you leave these questionable matters out of this article, do you see any excuse for it at all in a man's magazine? A. Yes. I should say that in a man's magazine it was legitimate enough to reflect the conduct and language that was coarse.

I wouldn't say it was legitimate to reflect conduct and language that was obscene. But I do think that it was perfectly permissible to imply that there exist attitudes towards sex and other things that are not the attitudes you wish to encourage.

*Herbert W. Smith—for Respondent—Cross.*

Q. Aside from these questionable matters and the rather sordid, if not filthy, reference in this article to the sailor inducing the proprietor of the establishment to lock up a jar of urine, do you see any reason for the article at all?

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A. That is in a way an editorial question, and I don't have much reaction to it one way or the other. I do not feel, as I did about the voluntary social worker, that it ought not to be included at all.

In other words, I have no strong opinion one way or the other about it.

Q. Now, coming to the March issue. First we had the advertisement of the Thorne Smith three wittiest, most ribald novels, America's one and only Rabelaisian humorist.

1004

I believe you indicated that from your knowledge of Thorne Smith, which consists of having read the novel called "Topper," and possibly the other two novels—or the three novels held forth by this advertisement—are improperly represented.

That's the reaction you get from this? A. Yes, one of the three would seem to be misrepresented.

Q. But did you get the impression from reading the advertisement, that the advertisement was intended to convey that something very risqué and Rabelaisian and ribald and so forth would be procured by the purchaser of these books? A. Yes, it states expressly that the three wittiest and most ribald novels were there. Ribald and Rabelaisian mean substantially the same thing.

1005

Q. At page 49 we have another one of the cartoons which counsel describes as a "Sultan cartoon," two soldiers and the slave girl with a "happy birthday" tag attached to her ankle, and in transparent and diaphanous bloomers and brief brassiere, and with the wording underneath, "I wonder how the Sultan knew this was my birthday."

*Herbert W. Smith—for Respondent—Cross.*

1006

I believe you said that the point of this joke was similar to that of the other Sultan cartoon, that counsel had previously referred to, to show amazement that anyone should send a birthday present such as this to a soldier. A. That was not quite it.

It was a juxtaposition of two codes that don't ordinarily come into contact with each other at all, and the assumption that an American or a French soldier would be given a slave girl as a birthday present is an absurdity and, accordingly, it was the close juxtaposition of these two things.

1007

The Oriental custom is that one Sultan might send to another Sultan a slave girl, and the customs of Western people are different. That was the source of the joke.

Q. You didn't get the implication that the soldier with the smile on his face and the large eyes was delighted at having this birthday present sent him? A. Yes, I did. I got the idea that he was using exactly the formula that he would use at home, how did so-and-so know that it was my birthday, and he was reacting in the same way, which was incongruous, because after thinking how nice it was to have the Sultan send the slave girl, he still has the question of what to do with her.

I don't think his expression is lascivious.

1008

If you want to say his eyes are bulging, they are bulging as he looks at the other soldier. There is no indication who is speaking—it might be the one who looks worried.

Q. It might be the one with his mouth open and the grin on his face? A. I think that is probable.

Q. If a soldier in such a situation got such a birthday present, he would probably use her only briefly, wouldn't he? A. I doubt if the Army barracks would make it possible for him to use her at all.



*Herbert W. Smith—for Respondent—Cross.*

Q. We don't see any barracks in this picture. There is a mosque— A. I took the Oriental decor in the background as being the place where the girl had come from, not the place the soldiers inhabited.

1009

Q. They are apparently on the desert. A. Yes.

Q. Page 68— A. May I be sure, before we leave the Sultan cartoon, that I have made myself clear? Of course, the sex content in that, the whole point in the thing, is that the sending of the slave girl, which is in accordance with the Oriental customs, is not in accordance with ours, and I don't for a moment deny that the girl is sent for what we would consider immoral purposes.

Q. On page 68 we have the "Fall of the Flattering Word," and I believe you stated you found nothing in there likely to arouse improper ideas? A. That is correct.

1010

Q. Do you agree, Professor, with the philosophy stated in the center of the third column? A. I didn't know there was a philosophy.

Q. "That these clothes will reveal and conceal so craftily that men will be driven mad with desire." A. I think that is greatly exaggerated. But I do agree with the fundamental assumption that clothes enhance sex appeal rather than taking it away.

Q. And revealing and concealing have an allure? A. Yes.

1011

Q. Would you apply that to the Varga girl pictures? A. No. It seems to me that the Varga girl pictures are rather curiously free from that. The clothes are used, as far as I can see, to keep the Varga girl within the conventions, but not for the purpose of accentuating the appeal.

Q. But in all instances the Varga girl clothing is very transparent and diaphanous? A. In some instances it is, and in some it is not, but no use is made of the fact that it

*Herbert W. Smith—for Respondent—Cross.*

1012

is diaphanous to suggest what is covered. I think any of us who have traveled on subways or elevateds have seen billboard advertisements with the figure in a one-piece bathing suit, where people have come along with a pencil and accented the pubic hair and the nipples.

That is only used in a medical examination with us.

But the Varga girls conspicuously do not do that.

Q. Don't you think, Professor, that to a great many people such bald-faced exposures would be disgusting? A. In the first place, I don't think they are bald-faced exposures.

1013

Q. I am not talking about the Varga girls. I am talking about the additions to the bathing girls you have seen on the subway. A. Of course they are disgusting, and I would allow you to put on all the rest of the adjectives in the criminal act.

Q. Well, a thing that is disgusting ordinarily isn't enticing, is it? A. No.

Q. You say the hill-billy cartoon at page 107 is in bad taste but it will not affect the morals of your pupils, or it would not affect the morals of your pupils should they see it? A. Or of young people of that age. I wouldn't confine it just to our pupils.

1014

Q. Do you say it is a common sight to see? A. No. I didn't say that, at least I didn't intend to. I intended to say it is certainly not an unknown sight.

I don't think it is a common sight with boys and girls that I know. I think it is a sight that all of them are likely to see.

Q. On page 60— A. Aren't you in the wrong number?

Q. I beg your pardon. That is the next number. A. This is April that we are moving to now?

Q. Yes, sir. I believe you first commented on the front



*Herbert W. Smith—for Respondent—Cross.*

cover here, that you don't like the front covers of Esquire—  
you think they are cheap? A. That is correct.

1015

Q. You think they are vulgar? A. That is correct.

Q. Professor, do you know enough about magazines to know that the front cover is usually the thing that sells the magazine at newsstands? A. I don't. In fact, the magazines that I have bought, I have never bought for the covers, so far as I know.

Q. You haven't had very much experience with spicy magazines, have you? A. There are two words in there that you have to define. I don't know what you mean by "much experience," or "spicy magazines."

1016

I certainly have read Life and Time and a good many other magazines.

Q. Take magazines like the Police Gazette. A. The Police Gazette is not on my reading list. It has been called to my attention, however, from time to time, by college students when I was in college.

Q. Magazines that go in for leg art and so-called cheese-cake, if you know what that means. A. Oh, yes, there was an article in Life on cheesecake, with illustrations.

Q. Ordinarily you haven't had much experience in that type of magazine? A. Except as it occurs in everybody's reading, but, of course, my point is that it does occur in everybody's reading.

1017

Q. And you think the bug-eyes of Esqy on the cover pages, and the cartoons in Esquire, imply that Esqy is looking for everything he can see. I believe that was the expression? A. Yes.

Q. Everything spicy that he can see. Do you mean that? A. Primarily, yes.

Q. Now, coming to page 60, this is the article or story dealing with "The Court of Lost Ladies." It says "Despite

*Herbert W. Smith—for Respondent—Cross.*

1018 Her Honor's years of earnest striving the ranks of the sisterhood have never diminished, never changed." A. I don't locate the passage.

Q. That is the sub-title. A. Yes, sir.

Q. You say that you were surprised to find this sort of a story or article in Esquire. Why were you surprised?

A. Because I have not been a reader of Esquire, because it seemed to me the seriousness of this story was in contrast with the rather futile figure of Esqy on the cover.

Esqy is represented as a rather futile and trivial person. This thing is done with complete seriousness and it seems to me with great effectiveness.

1019 Q. Do you think it would be effective in having the male pupils of your school refrain from having contact with such women? A. Yes.

Q. Were you surprised because you had in mind the reputation of Esquire for being risque? Were you surprised by reason of the fact that this article appears to discourage the visiting of sporting women? A. No, I was not surprised at all because this appears to discourage the visits to sporting women, and I was surprised because I thought of Esquire as a thing that was done in a lighter vein. This is done in complete seriousness.

1020 I have not been a reader of Esquire and I have found a number of pretty serious factual articles in Esquire which I had not known about at all.

Q. Your impression is that this article is done in complete seriousness? A. Yes.

Q. Now, coming to the May issue, pages 86 and 87, the strip "Exploits of Esqy."

Professor, do you say there are no indecent, obscene, lewd and lascivious implications to be derived from these cartoons picturing, first, Esqy peeking over the bushes? A.

*Herbert W. Smith—for Respondent—Cross.*

I said nothing of the sort. A person can derive indecent, obscene, lewd, and lascivious suggestions from almost anything. I never would say that no lewd or lascivious suggestions could be derived from—you can fill in your own line.

1021

Q. What do you think of a man peeking over the bushes at a nude woman in bathing? A. The nude woman is covered above the waist.

Q. At that point where the cartoon is drawn, but did you read the language under it? She gets out of the water and she dresses as she proceeds with Esky as they walk.

A. Are you looking at No. 29?

Q. Let's start at 29. "Time when women can become pregnant"— A. "Starting at the beginning of the sentence at 28. "The lady dislikes men"—

1022

Q. —Yes. "The lady dislikes men but wants a baby, so I sold her a ticket for the time when women can become pregnant by taking an electric shock. 'What do you want?' 'I want to see the redheaded dancer.' 'You won't need a ticket for that, just go upstairs and down the path.' Down the path was a brook and Esky saw the redheaded dancer in swimming. 'Hurray,' he shouted, 'at last a pretty girl to look at.' 'Esky—you darling, won't you join me?' But before he could a Western Postal girl tapped him on the shoulder: 'Follow me. You are to be judge of beauty in Finneagan's Dell.' Esky followed and so did the redhead, dressing as she walked. The Western Postal girl started to sing singing telegrams: 'Happy Birthday, Auntie Bess, every day I like you less.'

1023

"But Esky wasn't listening—to one side of the path Esky saw the most perfect creatures disporting themselves in a carrot-like clearing"— A. I am sorry, it is Corot—it is French.

Q. I beg your pardon. Continuing:

*Herbert W. Smith—for Respondent—Cross.*

1024

"The redhead explained: 'That is the abode of the Libidos where they gather when they are not on men's minds.'

"Esky watched them play gracefully or loll indolently by a tinkling fountain. The sound of their mellow voices lured Esky toward them like a magnet, but the redhead grabbed and held him. The Libidos joined in a ballet while leaves rustled an accompaniment. 'Why do so many look like movie stars?' asked Esky. 'Oh, they belong to men who are too lazy to imagine their own perfect woman, so they adopt the likeness of a star and if you look close, you'll see one old hag, the Libido of a man who just don't give a damn.'

1025

"Esky saw a Miss drift by. 'Come,' said the redhead. 'if you don't get to Finneagan's Dell in time, I'll be attending Esky's wake.'

"And the three of them hurried to the amphitheater. The Western-Postal girl explained: 'This contest is the result of an argument between Hollywood big-shots as to which studio has the star with the best shape.' "

1026

Do you say that there are no obscene, lewd, lascivious or indecent implications in the language and the accompanying pictures or cartoons? A. No, you are putting in the word indecent. Of course, the idea of a man conceiving of naked female figures is generally regarded as indecent. On the other hand, the story of Acteon coming on Diane bathing, a story from the Greek classics which is given to children when quite little, calls attention to the same point.

I take it this is a satire on comic strips, and does not challenge comparison with reality any more than the story of Greek goddesses would.

It doesn't seem to me as being lewd or lascivious, but the story lacks point unless the matter of indecency is involved.



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I don't think by that very fact that it is lewd, lascivious, filthy, or obscene. I think that is a distinction one has to draw or what we are engaged in has no reason at all.

1027

Q. And Eskey is pictured in these cartoons with the large bulging eyes you referred to before? A. Yes, but that is his stock characteristic, and he is never pictured any other way and his bug-eyes bulge as much in No. 25 where he is falling down and looking at the little male figure.

Q. And he is looking for everything he can see? A. Oh, yes.

Q. That is the language you used? A. Oh, yes.

Chairman Myers: Have you finished with that point, Mr. Hassell?

1028

Mr. Hassell: Yes.

Chairman Myers: We will adjourn until 9:30 tomorrow morning.

(Whereupon, at 5:30 o'clock, p. m., October 21, 1943, an adjournment was taken until 9:30 o'clock, a. m., Friday, October 22, 1943.)

1029

## HEARING OF OCTOBER 22, 1943.

1030

## PROCEEDINGS CONTINUED.

Chairman Myers: Mr. Hassell, will you proceed.  
Mr. Hassell: Yes.

1031

HERBERT W. SMITH, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

*Cross Examination by Mr. Hassell (Continued):*

Q. Mr. Smith, referring to the cartoon on page 48 of the May, 1943, issue of Esquire. A. This cartoon?

Q. Yes. A. There we have the airplane spotters on top of a building, one with a pair of binoculars, looking down towards the ground, and the legend underneath "She looks more like a B-17 than a P-40."

1032

You will note that this cartoon shows buildings apparently all around or close by, and in the distance an open place, a direction different from the way in which the man with the binoculars is looking.

I understood you to say on direct that this type of picture leaves a blank and is susceptible of other interpretations or several interpretations. A. That is right.

Q. Now, what other interpretation would you give to this? The worst you refer to as a man looking at a nude woman. A. It seemed to me that the assumption that the woman is nude is entirely gratuitous. There is nothing in the cartoon to indicate that at all. The phrase implied

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that they are looking at a woman and that she looks more like a Flying Fortress than a pursuit plane but that does not, in my mind, suggest the fact of nakedness. You can fill it in any way you want to.

1033

Q. It is apparently night? A. Yes.

Q. You can see the lights in the windows of the adjacent building? A. Yes.

Q. Referring to page 93, "Broadway for the Boys." A. Yes.

Q. The text and the printed matter adjacent to the picture. I believe you stated on direct that the reference here in this text to the fact that the soldiers have just come from a discussion of a hygiene lecture in which it was estimated that in the Army 20 percent do, 20 percent don't, and 60 percent might. You stated, I believe, that these fellows go home without having had any immoral relations with the girls in the picture. How did you arrive at that? A. I saw the play.

1034

Q. You saw the play? A. I saw the play.

Q. So you are going beyond what appears in the text here and in the picture? A. Oh, I see nothing here to imply that that is on the contrary from what happens in the play.

Q. You see nothing here about them going home without having relations. A. It seems to me it is quite explicit in stating that they do go home without having relations.

1035

May I read the paragraph?

Q. Yes, sir. A. The top of the second column of this little insert:

"One thing leads to another, and another leads straight back to barracks when Quizz decides he belongs to the first 20 percent."

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1036 That states explicitly that they went to the barracks without having had intercourse.

Q. The first 20 percent don't, the second 20 percent do, and the 60 percent might? A. That is right.

Q. You draw the conclusion from that, then, that there were no immoral relations? A. I think the conclusion is inevitable.

Q. I see. Does this text, coupled with this picture, indicate that immoral relations are contemplated here? A. It indicates that immoral relations are in the mind of one of the two boys.

1037 Q. I see. Now, coming to the June issue, at page 34 is a picture of the Varga girl in a semi-recumbent repose, leaning back on one hand with her legs under her. What sort of a costume would you call this that is on this figure? A. The conventional costume of the ballet dancer practicing.

Q. The ballet dancer? A. Yes. That is made clear by the verse that goes with it. The first line says:

"Your life as a young ballerina  
Is devoted entirely to art,"

And I should disagree with your description of the position as semi-recumbent.

1038 Q. How would you describe it? A. I would say it is a conventional pose from the ballet. Recumbent means to me lying down. And the girl is anything but lying down.

Q. Did you ever see a ballet dancer in such a costume as this? A. Yes.

Q. One-piece affair, so sheer that the folds and wrinkles in the body are shown? A. I should not say that was so sheer that the folds and wrinkles in the body were shown.

Q. Can you see a wrinkle or fold down the middle of the body leading to the umbilicus? A. Yes.

*Herbert W. Smith—for Respondent—Cross.*

Q. I don't have to pronounce that "umbil-eye-cus" now?

A. I agree with your pronunciation of that. Would you repeat the question, please?

1039

Q. I say, do you see a wrinkle or fold or a crevice coming down the center of the body to the umbilicus? A. No. As a matter of fact I see one coming in from the side, which will probably serve your purpose just as well.

Q. You don't see it coming from the breast? A. I see a lightening indicating the modeling of the body, but the only wrinkle I see is over the hip.

Q. I have reference to this (indicating). A. It is unquestionably a shadow indicating the modeling of the body.

1040

Q. Maybe I described it ineptly. I will say a crevice, or whatever you want to call it. A. I am not picking at your phrase. But I want to imply that is not an indication of the sheerness at all; it is an indication of the fit or cut. The material in that costume does not seem to me translucent.

Q. Notice the scantiness of the cut of the material. A. Yes, sir.

Q. As it passes between the legs of the model, a ballerina or dancer who actually had this on and danced in a costume of this sort would probably expose herself there, wouldn't she? A. I should say emphatically not. The costume is designed to prevent it.

1041

Q. But this material is cut up above the area of the body where the torso joins the body, isn't it? A. It doesn't seem so to me.

Q. Could you locate the points of the breasts of this model through this material? A. No more than in any advertisement for women's underwear.

Q. And do you usually see advertisements of women's underwear in colors, natural body colors? A. I have not looked at them closely enough to know.

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1042

Now, let us refer to page 134. There we have "Libel Suits Were as Wine to that Hell-Firin' Editor of the Old West, Dave Day."

I believe you said that this jingle about the epitaph

"Here lies the body of poor old Charlotte.  
Born a virgin, died a harlot.  
For eighteen years she kept her virginity.  
An all time record in this vicinity."

1043

I believe you said you say nothing in that that would tend to corrupt the minds or the morals of your pupils? A. That is correct.

Q. I believe you referred to the antiquity of this ribald joke. A. I did.

Q. Do you think by reason of its antiquity and the fact that it is known that it would not be novel to pupils in your school? A. Yes.

Q. You said you read the Muldoon paragraph four times without realizing its vulgar connotation? A. I admit it.

Counsel called my attention to the fact but I did not get it when I read it originally.

1044

Mr. Bromley: You are talking too much. Mr. Hassell.

*By Mr. Hassell:*

Q. But you say, Professor, that although this is vulgar or has a vulgar connotation it is not likely to affect the conduct of right or wrong of your pupils? A. That is my opinion.

Q. Looking at that paragraph in the column I just read, would you permit your pupils to use the word "harlot" in your school? A. Not in my presence.



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Q. If the word were used in your presence you would take disciplinary action, would you not? A. I should take action to discourage it; probably disciplinary action.

1045

Q. Why would you do that, Professor, if there is nothing about it, or nothing harmful about it? A. Because I should take similar action for any other breach of good manners. May I go a little further into that answer because I think that touches a great many of the questions that are phrased? That is a question of the criterion of obscenity from the point of view of the boys and girls of the age that I am concerned with. I should certainly not allow them to use the word "son-of-a-bitch" in my presence. I should object to it very much. Similarly, I would not allow a perfectly scientific medical book dealing in detail with the urinal-genital tract to be in the library. That is, there are a great many things that are inappropriate to school which do not seem at all obscene.

1046

Q. I don't believe you commented on the two other items you have discussed in this article, or whatever it may be called. That is the first one, "Social items on the first page include such as these:

"2. Weddings are on dit for next week. This weather kind of suggests two-in-a-bed spoon fashion."

Did you discuss that? A. I did not discuss that.

Q. You don't think there is any obscene, lewd, lascivious or indecent connotation to be gathered from that? A. I have never seen anything obscene or indecent about two spoons lying together.

1047

Q. This kind of suggests two in a bed spoon fashion, doesn't it? A. Well, lying beside each other.

Q. Well, what other way could you lie in bed spoon fashion? That would be about as close as you could get to

*Herbert W. Smith—for Respondent—Cross.*

1048

gether, wouldn't it? A. Simply side by side. Spoons are ordinarily laid out in the silver drawer side by side, parallel.

Q. But they can be put on top of one another, and they cannot get any closer, can they? A. Yes. As a matter of fact, when I read it that was not the image when I read it. It seems to me that when you are implying one on top of another you are reading into it something that is not there or necessarily suggested from the first or previous one.

Q. Why does it use this method of expression two in a bed spoon fashion? A. Well, it is a way of saying two in a bed side by side.

1049

Q. That is what you get? A. That is what I got from it.

Q. Now the other item you did not comment on, and that was the one which reads:

"When Chipeta, Queen of the Utes went to Washington, Day pretended that she had been seduced there by an eminent gold-standard statesman. He followed the case for nine months, announced the birth of a boy, named by Day for the statesman, and chronicled the alleged boy's growth for years by that name."

1050

Would you say that that item bears any indecent, lascivious or lewd connotation? A. No. It would seem to me that it was a description of an unwarranted and libelous attack, but it is merely a piece of reporting. I see nothing there that would stimulate lascivious images in the mind of a student or any other reader.

Q. The fact that Chipeta, the Queen of the Utes had been seduced and nine months thereafter brought forth a child as a result of the seduction; there would not be anything immoral or improper or indecent in that? A. Now it seems to me completely necessary that we assume that young people should be acquainted with the fact that sexual relations lead

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to birth of children. That certainly is not an idea of obscenity in itself. It seems to me also that they are acquainted with the fact, the deplorable fact, that people from time to time are seduced. The presentation to young people of the idea that there are such things as sexual impurity is not an incentive to them to take part in sexual enjoyment.

Now it can be so presented but it does not seem to me to be so presented in this case.

Q. What would you think would be the reason for including items of this sort in a man's magazine? A. Well, items of this sort, and there are a great many items of this sort included, rather consistently, in order to give the local color of a rather wide cross section geographically and culturally of the United States.

Its particular appropriateness to a man's magazine is that it has rather rougher language, cruder language than would be appropriate to the Ladies' Home Journal.

Q. Isn't it a fact that, Mr. Smith, with this type of material plus the pictures in the magazine, that that accounts for its reputation for being risque? A. Quite possibly.

Q. Now, the July issue, page 76. I believe you stated with respect to this color photograph and the central figure therein, that this is a customary amount of exposure. A. I did.

Q. You wouldn't take any objection to that picture? A. As a piece of reporting on a musical comedy, I certainly should not.

Q. Even though it appeared in a risque magazine? A. Even though it appeared in a magazine which was considered risque.

Q. Now, turn to page 146, the central figure in the advertisement on that page. A. Yes.

Q. Is it your experience with pupils in your school that the picture of an entirely nude woman with a transparent

*Herbert W. Smith—for Respondent—Cross:*

1054

affair laying across her buttocks, would not be noticed by your children at all? A. It seems to me unlikely that any one in the school looking through the magazine would notice a picture of that size, even if the description that you gave it were an accurate one, in the middle of the advertisement.

Q. Do you think this model is clothed? A. When I read through the magazine I didn't notice it. I assumed it was a picture of a person sunbathing. I didn't even notice if it was a hat or a diaphanous bathing suit. I did notice that the picture was face down and none of the front of the body was exposed.

1055

Q. But this picture does show without any obstructing material whatsoever the nates of this person, doesn't it?

A. You have used a word that is beyond my vocabulary.

Q. That is the contour of the rear portion of a woman's body. A. It is beyond my vocabulary. I didn't know it.

Mr. Bromley: He made it up.

The Witness: Will you read the question?

*By Mr. Hassell:*

1056

Q. I said, that portion of the body is shown? A. A part of the buttocks of the woman are shown, yes. I hope you don't mind my cruder description.

Q. Extending on up to the waist and on up to the neck and head? A. Yes.

Q. This figure appears also to be in life-like color, doesn't it? A. Not particularly. I don't want to offend the art editor.

Q. It is a flesh colored figure, isn't it? A. I think it is meant to be, and, by the way, may I again say that I am not being flippant in answering the question at all. If you com-

*Herbert W. Smith—for Respondent—Cross.*

pare the color there with the very life-like flesh tones in—  
what is the figure draped in gold cloth which is also in the  
cited material?

1057

Mr. Bromley: Golden Mould.

The Witness: You will see a great deal of difference in the realism of the presentation. This seems to me to be rather a crude coloring in comparison with the other one.

*By Mr. Hassell:*

Q. Now, we come to the strip of Eskey on page 87. A. 1058  
Yes.

Q. You referred to the ambiguity here about money. A.  
If I used "ambiguity", I would like to use a somewhat different word, because "ambiguity" implies only two meanings.

I intended to state that a multitude of meanings could be attached and the attention is not directed to one any more than another.

Q. Name some of the meanings that might be attached, will you, Professor? A. I don't see how mermaids are able to survive when they go under water because they have lungs and not gills.

Q. But the text under this says:

1059

"You see—women are women the world over."

"Eskey turned to Verne: 'Say, there's something I have always wondered about mermaids—'"

Do you say that does not have a definite connotation? A. It doesn't seem so to me. He simply changes the subject and goes on with the next.

Q. Now, I understood you to testify, Professor, that if the worst connotation be applied to this, that, of course, would be obscene? A. Yes.

*Herbert W. Smith—for Respondent—Cross.*

1102

cartoon or picture should have been included in the citation at all. A. Yes, sir.

Q. To you that has no point that is indecent or "suggestive"?

A. That is right.

Q. No suggestive point at all? A. No.

Q. Let's come to the October issue, Professor. Refer to page 10, the third column, "The case of the classy chassis."

A. Yes, sir.

1103

Q. Do you think the characterization in this letter of the Varga girl pictures as the "Varga wenches" is an appropriate characterization? A. I think the term "wench" is one of the terms that I alluded to yesterday whose meaning has changed very much, and I think the connotation of the thing, like "gal" is a fairly cheap connotation, but I don't think it implies at all the same thing as prostitute, harlot, and so forth, loose sexual behavior, in this connection.

Q. He goes on to say, "We who appreciate shapely forms," and "a spot has been reserved on my wall to deposit such a dish."

Now, men don't eat women, do they? A. No. I hadn't thought of the implication of cannibalism, if that's what you mean.

1104

Q. But referring to a shapely wench as a dish doesn't convey any sexual connotation, does it? A. Of course, it has a sexual connotation, but it is not the connotation of an indecent picture of a woman. The reason, of course, that they are pinned up is that they are pictures of girls.

Q. I see.

Let's go to page 37, the cartoon in the lower right-hand corner. A. Yes.

Q. I believe you stated that the sailor flexing his biceps on which is tattooed a hula dancer is manifestly simply to show the native girl a trick. A. It seems so to me, yes.



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Q. And you think the readers of Esquire would get no other impression? A. It seems to me that is the impression obviously pointed out by the marks indicating that the biceps are being flexed, and the point of the cartoon would seem to me to be that he is showing a native girl the kind of dance that she can do.

1105

Q. I won't undertake to cover all of this in this magazine. The Portrait Above the Fireplace story, page 56 and 128. You recall the story? A. I recall the story, yes.

Q. The picture the man idealized as his mother, and he didn't know his mother, and the final revelation to him that it was a picture of the Madam of a bawdy house. A. Yes.

1106

Q. Would you say that the combining of those sentiments in such an article or story in such a magazine as this would have a filthy connotation or implication? A. No. It seems to me it is almost exactly identical with the point of Shaw's Mrs. Warren's Profession, which is included in the collections of Shaw's plays which are commonly available in school and college libraries.

Q. Referring to page 93, "Goldbricking with Esquire," and to the item 17 in the last column of page 93, second item, "What does f-e-e-t spell"? A. That is not your question, is it?

1107

Q. No. I am referring to that. I believe you stated that the point of this joke was to bring out the discomfiture of the teacher? A. Yes.

Q. As a teacher, Professor, I guess that is the one that hit you first? A. That is the one that caught my eye.

Q. Now, coming to, page 104 and 105: "The Sporting Scene". I don't recall that you commented on this. A. I did.

Q. Did you? A. Yes.

*Herbert W. Smith—for Respondent—Cross.*

1108 Q. I beg your pardon. A. It is all right.

Q. You are familiar with the story? A. I am familiar with the story.

Q. You say this has no indecent or objectionable connotations from a sexual standpoint? A. It seems to me not to point to any. I am willing to repeat in substance what I said and that is that the point of the story is that she has been advised about everything else on earth except having children. That is something that she feels that she can do without any kibitzing.

1109 Q. Now, to the November issue, Professor. Referring to the Varga girl picture, page 46. A. Yes, sir.

Q. You only took exception to the undue feeling of shame shown in the expression of the face and indicated by the verse? A. That is correct, yes.

Q. That picture is supposed to be flesh color, isn't it? A. Yes, except for the torso, which, of course, is intended to be a garment of some sort.

Q. Page 52, the page having another Sultan cartoon. "Such a neighbor—always borrowing".

1110 You say there is no indecent sexual connotation to be applied to that picture? A. Well, again, I have to discriminate rather carefully as to what I do say. It is the juxtaposition of the common homely phrase about such an unusual neighbor, always borrowing, with the very exotic and foreign situation of men having female slaves, and it is in the juxtaposition of those two incongruous pictures that the cartoon gets its point.

Now, if the idea of having women slaves were not completely incompatible with our whole cultural picture, there would be no incongruity at all. To us, the idea of having female slaves is, of course, an immoral idea, so it is the juxtaposition of these two very familiar homely phrases with

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the context that does not go with the point of the picture.

Q. Page 60, the color photograph: "Esquire Canteen" and the matter in the text: "Here are five perfectly good reasons why service men and mere civilians pause for laughter, libation and libido at the Folies Bergere."

1111

What does the word libido mean? A. Well, the word libido in Latin, of course, means lust. The word libido as used by the psychiatrist I imagine has been defined more definitively by Dr. Tillotson than I could define it, but the connection in which the ordinary layman regards it is in projection of one's ideas and desires of the opposite sex. It is, however, certainly a point, sir, on which I would not pose as an expert. You had an expert on the stand before me.

1112

Q. You didn't hear his testimony? A. I haven't any idea what his testimony was.

Q. Now, the cartoon on page 66: "We are outnumbered", judging from the costumes of the native girls there shown, the expressions on the faces of the two soldiers and the legend underneath this cartoon winding up with: "Yipppee", would you say that there is no indecent sexual connotation to be attached to this cartoon? A. It seems to me as near as you could come to a cartoon of being almost a stock situation in musical comedy. The soldiers coming on, they are surrounded by a bevy of native girls, looking like the natives of no country on earth, and they surrender with alacrity. It is a thing that is so common.

1113

Q. It implies sexual conduct? A. Well, it doesn't imply sexual intercourse, but it implies the pleasure of being surrounded with a lot of pretty girls.

Q. Have you ever heard or read about Kanaka women in the South Seas? A. Yes.

Q. And the way they receive white men and take care of

*Herbert W. Smith—for Respondent—Cross.*

1114 them? A. Yes. I have read Margaret Mead's "Coming of Age in Samoa", which has a detailed description of that and that culture.

Q. Well, Herman Melville's "Typee". A. I haven't read "Typee", no.

Q. Now, referring to the cartoon on page 67. A. Yes.

1115 Q. In your statement on direct you did not refer to the clothing or lack of clothing, that is, lack of concealing clothing on the female figure which is rendering the service nor to the size of the breasts and the hips in the picture. When your attention is called to those factors, would you say that coupled with the expression on the mouth of the soldier who is about to put the stem of the bubble pipe in his mouth, that this cartoon does not have any indecent connotations? A. I don't remember what I said, but I will be very glad to answer your question in just a moment. The expression on the mouth of the soldier seems to me not emotional at all, but he is merely talking to her, to convey to her the idea that he is saying that at the U. S. O. Club he got cigarettes. I think I did mention that the point of the joke at which attention was most immediately directed was the contrast between the free cigarettes in the U. S. O. and this rather formidable bubble pipe that they are furnished with there. It does not seem to me at all that the female figure is life-like. It is a cartoon, and it is burlesque, and it would not seem to me or to any human being to be sexually stimulating.

1116 Q. Now, turning to page 73, the "Golden Mould" picture. Did you by viewing this color photograph get the impression that this model has no clothing underneath the sheer or web revealing piece of cloth thrown across her body? A. I got the impression that she has no clothing under the drapery.

*Herbert W. Smith—for Respondent—Cross.*

Q. You can see the umbilicus here through it. A. No. You can see an indentation under which the umbilicus unquestionably is. You can't see the umbilicus. It seems to me rather similar, as a matter of fact, to the famous "Victory of Samothrace".

1117

Q. Now, down to the pubic region, is that unduly shaded? A. It didn't seem to me at all. The shadow is due to the folds of the cloth, not to any darkening because it is diaphanous.

Q. Page 77. A. That is "First Nights and Passing Judgments"?

Q. Yes. George Nathan's article. A. Yes.

1118

Q. Would you say that this article contains no filthy, indecent language? A. I want to look at it closely before I say anything.

Q. Well, the paragraphs, Professor— A. I am looking at paragraph 21. I am afraid I interrupted your question. You are asking me about another paragraph?

Q. Paragraphs 10, 21, 15 and 1 are the ones I had in mind. A. Well, let me state in reasonable fullness what I do think. I do not think that the mention of "sporting house" or "bawdy house" is itself indecent. And I do not think that it is sexually stimulating to modern readers.

Q. Is it filthy? A. The mention of it itself?

1119

Q. Yes. A. No. The mention of that would not mean to me a filthy act. For example, in Shakespeare's plays frequently the word "bawdy" comes up and I feel no shame at reading the play in the class nor do I think the boys and girls feel any shame.

The point that I made is that Nathan is objecting strongly, and he picks out objectionable things to draw attention to, so that the young floozy characters with their short skirts and knees showing are made up as disgusting,

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1120 with the deliberate intention of condemning. Now, the presentation of something that is disgusting in order to condemn it again does not seem to me in any way indecent or immoral or obscene. That would apply also to 10 and 21.

Q. Turning to page 83: "My date's at the awkward age—all hands and no dough".

Would you say that the reference to the all hands might convey the idea or connotation that her date is using his hands to explore her anatomy? A. I should take it that, from the context there, since she has a dancing frock that is cut very low, that he had been petting, pawing her back.

1121 Q. Now, let us go to the next one, 89. That is the circus picture. A. Yes.

Q. Would the almost nude model in the lower left-hand corner—I believe you referred to this as a matter of reporting? A. Yes. Boys and girls go to the circus. It is a pictorial report of what they see.

Q. You think the fact that the thing is reported in a magazine of this sort licenses nudity? A. Why, I don't see any nude figure.

1122 Q. Or near nude such as on this model in the lower left-hand corner. A. That comes to the question that we keep recurring to, and that is the effect of the exposure of any part of the body depends on the situation and the society that surrounds it, and if this figure is one that boys and girls see when their parents take them to the circus right along, it seems to me it is in no way more suggestive when it is represented by a picture in a magazine.

My position steadily is that you have to construe the whole content in which these things occur, and I see nothing indecent or filthy in having these children find in a magazine a picture of something they saw with their parents.

Q. Now, referring to pages 94 and 95: "Goldbricking



*Herbert W. Smith—for Respondent—Cross.*

with Esquire", the first item that is number four on column 1, about the corporal going home. A. Yes.

1123

Q. I believe that you stated that the point of this joke was unmistakable. A. So it seemed to me.

Q. That it was impossible for the other girl to stay? A. Yes.

Q. Is that your impression on looking at it? A. That is my impression. That is, if you can construe this as a little drama. What would happen, of course, is that both girls would leave. The joke is just like one I saw in Esquire. I can't give you the exact reference, but I noticed two soldiers under heavy shelling and one of them says to the other: "Jees! I'm afraid I got french mouth", whereas what he has got is so much worse than trench mouth, that gives the thing its point.

1124

Q. But the man says: "I'm sorry, one of you girls will have to leave". A. Exactly.

Q. Doesn't that necessarily imply that the other one should stay? A. It implies that he is stating the least ground on which he would be willing to have them remain, that at least one of them will have to go.

Q. If that did occur there would be no indecent or immoral or objectionable inference to be drawn? A. No. Now, let me tell you what would seem to me to be objectionable at that point. If he had been inducing the other to stay saying, "One of you go but I will give two bucks for the other to stay".

1125

Q. Now, item 15. A. The same page?

Q. The same page, the fourth column on the bottom of the page: "He: 'I see your husband has been promoted to a master sergeant. I suppose he's brilliant and knows every thing'."

*Herbert W. Smith—for Respondent—Cross.*

1126

"She: 'Don't fool yourself. He doesn't suspect a thing.'"

Don't you say that that implies some extra-marital relation between the He and the She, who are talking? A. No. I think again that that is one of those that you can fill in to suit yourself, but not with the direction attracted towards any extra-marital relation between this particular He and She. I don't like to say He and She.

The point of that joke seems to me the very ancient one that husbands don't know everything about their wives and it does imply that there are things in her life that her husband does not suspect and she doesn't intend that he should.

1127

Q. But you don't take it to mean this He is having anything to do with this She? A. Not with the one She is talking to.

Q. Now, the item in column two on page 95: "Home on Furlough", where it is stated that she has lost so much weight that "you can count my ribs" and he asks "Where do I start?" A. That is right.

Q. Does that joke imply a close exploration of the girl's body by the soldier on furlough? A. If you mean that the joke implies that he is going to go on and do it, I should say No. If you mean that he is calling the attention of the girl to the fact that she is inviting it and she better change her phrase, yes.

1128

Q. You don't think there would be anything indecent in that? A. No. It seems to me to call the attention of a person to the fact that a phrase that he has used is much more sweet than he intended it, and as a courtesy I should appreciate it from you on cross examination also.

Q. That would be a perfectly proper joke for current circulation among your pupils? A. As a report of what went on in the Army it would seem to me so innocuous that I should have no objection to it whatsoever.

*Herbert W. Smith—for Respondent—Cross.*

Q. Now, item 27, which refers to the absence of a bottom in the dishpan, with the naked woman picking up the dishpan as she came out of the water. Do you recall that?

1129

A. Yes.

Q. Does that imply necessarily the inescapable conclusion that this soldier saw this person in the nude and a certain part of her anatomy? A. No, it seems to me, and I am answering that not hastily, it seems to me that the attention is directed to the fact that the woman assumes a superiority and invulnerable position so much so that the K. P. calls to her attention the fact of it. Now, it does imply that the woman is more exposed than she thinks she is. I don't think that it inescapably implies that he is looking at her private parts.

1130

Q. Now, take item 28, which is the one immediately below that. A. I said that was very old.

Q. That is very old? A. Yes.

Q. And by reason of its antiquity it would not have very much point at all? A. Not much. I have heard a mother say to her child on the way to a party, "Go to the party, dear, and be good and you will be happy and you will miss lots of fun."

Now, it is a perfectly acceptable piece of conversation.

Q. Skipping the next one and going to the one after that, item 30, buck private. A. Yes.

1131

Q. You say there is no improper sexual connotation to be obtained from that? A. The desire to get rid of a chaperone, no.

Q. 31: "Pardon me, Miss". I believe you stated that did not imply— A. That she is naked, correct.

Q. That she is naked? A. No.

Q. Now, 35, the cartoon in the last column. A. Yes.

Q. I believe you said it is not much of a joke because

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1132

the two females in the water are covered up to their busts.  
A. I don't know that I said it wasn't much of a joke. I said there wasn't much indecent exposure involved.

Q. But, do you think it implies that those camouflaged soldiers, camouflaged as trees, are expecting and hoping to see indecent exposure? A. Yes.

Q. And there would be nothing indecent in that? A. I have been saying every time you have asked me that there can be nothing indecent in things such as you have mentioned. There can be something indecent in everything, of course.

1133

Q. If that were the fact— A. I think I mentioned in that connection the fact that calling attention through story incident or a story where there is a situation involving indecent exposure is not by itself indecent, and I cited a story, if I am not mistaken, of Acteon coming on Diana and her maidens bathing, which is in most of the stories from Greek mythology, and there is no doubt that that story has its main point that Acteon sees naked female figures and still it is not regarded in any way as an indecent story.

Q. You think this cartoon is comparable to that? A. I think it is comparable to it.

1134

Q. From an artistic and literary standpoint? A. Not from an artistic and literary standpoint. From the point of view of any possible obscene content.

Q. Referring to the next article, item 36, a beautiful young lady. That is the old Willy who was 79 "Darn it" story. I believe you stated this joke was at least 30 years old and would have practically no point due to its antiquity. Is that right? A. It seems so to me.

Q. Now, Professor, do you claim to be an expert on obscenity, lewdness, lasciviousness, indecency and filth? A. God forbid!

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Q. You are being paid a fee for appearing here? A. Not at all. 1135

Q. You are not being paid a fee? A. No.

Q. You are appearing here voluntarily? A. I am appearing here voluntarily.

Q. With not even your expenses being paid? A. My expenses are paid, yes.

Q. Just your expenses? A. I hope. I must correct that. I am under oath, I received an advance, a sum of money, from which my expenses will be deducted and from which I hope there will be a refund to Esquire, Incorporated.

Q. Are you in any way connected with the publication Esquire? A. No. 1136

Q. Are you a subscriber to the publication? A. No.

Q. How did you happen to come here? How did you become interested? A. I will explain that. Mr. Gingrich's children, all three, were in my school for a time.

Mr. Gingrich has been active among the parents and was at one time president of the Parent's Association, and even now that he is in the suburbs, the oldest of his three children is there.

He called to my attention this material and asked if it seemed to me to be obscene and grounds for barring a magazine from second-class mailing privileges, and I said "No", and he asked me if I would be willing to go on the witness stand and state that in public and, of course, there is only one answer to that question. 1137

It seemed to me it was a serious question that was involved, and it was an inescapable duty to do that.

Mr. Hassell: That's all.

*Herbert W. Smith—for Respondent—Redirect.*

1138 *Redirect Examination by Mr. Bromley:*

Q. The word "prostitute" has indecent connotations, hasn't it? A. Yes.

Q. Yet the use of the word "prostitute" in a magazine is not indecent? A. No.

Q. Do I understand your position to be that people can draw indecent or obscene suggestions or implications about anything that relates to sex? A. Yes.

Q. The mere fact that such suggestions or implications can be drawn does not, in your opinion, render the matter itself obscene or indecent, does it? A. Correct.

1139

Q. In using the term "indecent" in your testimony, you have used it in a broader sense than "sexual indecency" in that you refer to considerations of propriety. Is that correct? A. That is correct.

Mr. Bromley: That is all.

Mr. Hassell: No further questions.

Mr. Cargill: The witness has been on the stand a long time, and I know it is tedious, but to clear up one or two points in my mind I would like to ask a few questions.

1140

In the early part of your testimony you mentioned something about this magazine furnishing a valuable function. Do you recall that part of your testimony?

The Witness: Do you refer to what I said about the drawings of the Varga girls?

Mr. Cargill: Perhaps that was it. What did you refer to as "valuable function"?

The Witness: It still means we understand each other, and that is the reference, I will repeat that.



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It seems to me that the holding up to admiration of an idealized male or female body, as long as the body is draped enough to accord with the demands of decency—in other words, to present as near a naked body as convention allows and to hold that up to admiration, is a good thing.

1141

There has been a very definite effort to rid young people of the idea that the body is in and of itself an obscene thing, or that sex is in and of itself an obscene thing. There is a great danger in having young people brought up with no association with sex other than the gutter association, and accordingly it seems to me the Varga girls have value from that point of view.

1142

I made exception to the one where the body is obviously a source of shame and in which the wolf was looking on, that, I think, being the cause of that shame.

Mr. Cargill: Do you think that these Varga girls would be a valuable addition to your school in having them pasted up?

The Witness: No, I don't. What I meant by saying that I thought they had value is that I think that there is value in having the young people realize that that kind of a picture can be circulated without people thinking it was obscene.

1143

I wouldn't want that pasted up as there are pasted in some schools, models, usually nude silhouettes, of the age of boys and girls of the school, and standing in the bent posture. Those are frequently pasted in the athletic departments of schools.

The Varga girls are not models in that sense. And, I much prefer the word "idealized" to Mr. Ziegfeld's phrase "glorified".

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1144

But it is a figure held up to admiration in a way for them to realize it is a perfectly acceptable thing.

Mr. Cargill: Do you use any models in your school at all, or any such drawings or pictures or paintings?

The Witness: Models, but not nude models in the school.

Mr. Cargill: What type of model do you use?

The Witness: Almost anything from still life—they get supplies for the lunch room in still life—and sometimes they pose for each other, ordinary portraits.

1145

Mr. Cargill: Do they pose in the nude?

The Witness: No.

Mr. Cargill: Or in light garments?

The Witness: Some schools that I know, although not in my school, there has been a deliberate attempt to pose in the tightest fitting bathing suits that were generally acceptable, for the explicit purpose of putting that in service with other pictures of sports.

1146

For example, in one school I know there was a series of murals, and some of the figures were football and hockey players where the figure was hardly recognizable, and also the swimming team, including the girls' team, posed in rather tight-fitting suits. And that was done after a number of conferences as to the advisability. That is not done in the Francis Parker School. The answer is "No."

Mr. Cargill: You mentioned that you have a library in your school.

The Witness: Yes, we have a library.

Mr. Cargill: Do you have any magazines in your library?

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The Witness: Yes.

1147

Mr. Cargill: What magazines?

The Witness: I can't be absolutely sure of all of them, but Harpers, Atlantic Monthly, Geographic, Time, and—possibly Theatre Ads. Esquire is not among them.

Mr. Cargill: I believe the question was asked if it was banned in your school.

The Witness: It was not banned. We had also a recreation room which the boys and girls furnished and brought magazines and books of their own. I think Esquire was among those magazines.

1148

Mr. Cargill: Are there any magazines banned at your school?

The Witness: We have not banned any magazines. We have banned—the library committee of the school, the student committee, recommended that we purchase "For Whom the Bell Tolls", when it first came out, and we refused to have that in the school library, not because I thought it an indecent book, but because I thought it a shocking book—I am thinking of the clubbing to death and so forth—and I thought to deliberately call that to the attention of young people was to expose them to violence, but so far as I recall, that is the only recent instance of a book being banned.

1149

That does not mean it is a fully representative library. It is a school library and our funds are limited and we purchase the books we think will be most useful to children.

Mr. Cargill: That is the one book you banned?

The Witness: That I remember.

Mr. Cargill: What books do you use to educate your children on this subject of body?

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1150

The Witness: We don't have any specific material for that purpose because the whole tendency—and our belief goes with it—since the conference that was held about twenty years ago at the initiative of the Y. M. C. A., a conference of religious leaders, psychiatrists, and educators, where we pooled our information and made it clear that we were unanimous in believing that sex should be taught in the normal context.

1151

In the school I headed in New York we had difficulty with some lawyers because a bequest was left us solely for the purpose of sex education, and we all believed that as soon as you segregated sex education it became undesirable, and the lawyers said: "When you combine it with anything else you are violating the terms of the trust."

Do I make that clear?

Mr. Cargill: You have answered the question.

Doctor, you have testified here for yourself and for the students or the children that come under your jurisdiction?

The Witness: Yes.

1152

Mr. Cargill: What would your definition of "impure thoughts" be?

The Witness: I think I can answer that with a very specific instance. I dismissed a boy from the school two years ago for a joke that was to my mind obscene and filthy, and I think that will answer your question.

Mr. Cargill: What was that joke?

The Witness: I was going to tell you.

At a dance he got possession of a girl's handbag. He put in it a rubber contraceptive. He then told

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the other boys and girls to watch the face of the victim when she opened her purse, and I dismissed him from the school for it. 1153

In general, if you wish me to generalize, the jokes, the books, the material that seems obscene to boys and girls of high school age, is almost directly associated either with the sexual act or terms that in their minds connote the sexual act, or those other physiological processes that are not mentioned in society. They are generally not matters of innuendo.

Mr. Cargill: Then, by innuendo a thing could be obscene? 1154

The Witness: What I am saying is that such obscenity as there is in the schools that I know about, does not take the form of innuendo. It takes the form of rather brutal and direct, calling attention to the mechanics of procreation or elimination.

Mr. Cargill: Would that be your definition of "impure thoughts"? 1155

The Witness: That is an impure action, and, of course, the impure thoughts are obviously evoked in the eyes of the boys and girls who were invited to watch the face of the girl who was going to be shamed. I should say those were impure thoughts, very distinctly.

Mr. Cargill: What would be your definition of "sexual impurities"? 1155

The Witness: Sexual impurities would be plural rather than single.

Obviously, pre-marital intercourse would be sexual impurity, but I wouldn't confine it to so narrow a range as that by any means. It would seem to me that the presentation of erotic images of extra-



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1156

marital nature and in such a way as to make them attractive, in such a way as to make it appear to a boy or a girl that in order to be adult and sophisticated he had to indulge in that kind of conduct. It would seem to me that would be impure.

Mr. Cargill: Is that a complete answer?

The Witness: No, I think that is enough. It seems to me to illustrate it.

Mr. Cargill: That would constitute your definition of sexual impurity?

1157

The Witness: That would be a part of it. It is an illustration rather than a complete definition.

There is something that would not constitute sexual impurity but would be undesirable to develop in young people. I think, for example, it would be highly undesirable to give to boys and girls even the clearest complete description of the sexual act. There are books, as you know, which are endorsed by doctors, which give full information about marital relations. It would seem to me to be unwise to put such complete descriptions before boys and girls, because it is unduly stimulating and, after all, in our society, marriage is not possible for a number of years beyond high school.

1158

Mr. Cargill: Doctor, do you think pictures or literature have any effect or tendency to stimulate the sexual desire?

The Witness: That is a very difficult question to answer because I think that the growing boy's or girl's whole conception of society, including, of course, sexual relations, is very strongly influenced by what he or she reads.



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I think for instance that having him read fiction in which fine family life is represented is extremely good for him. I think that such a book as "The Bent Twig" by Dorothy Canfield Fisher is an excellent thing. It treats of sexual relations. It calls attention to the fact that certain types of marriage are higher than others, that the marriage relation can be a higher or a lower relation.

Mr. Cargill: Do you think that reading literature or looking at pictures would tend to increase the sexual desire to the extent of increasing the sexual impurity as it is in the world today?

The Witness: I think it would be conceivable that might be done. I don't think it ordinarily does.  
no.

Mr. Cargill: Getting down to cases, would you think that the cartoons, as are presented in this book, this magazine, Esquire, most of them or, as a rule, have a double meaning?

The Witness: I am not thoroughly enough acquainted with Esquire to have much confidence in my own answer. I am not a steady reader of Esquire.

Mr. Cargill: Those cartoons and pictures that you have observed since you began your study of Esquire in order that you might testify here, would you say, as a rule, they have a double meaning?

The Witness: You mean in the sense of implying a sexual impurity? Do you mean that is one of the meanings?

Mr. Cargill: Yes, sir.

The Witness: I read through two complete numbers, from cover to cover, and while the point of most any joke is that it has two meanings, the proper

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1162

tion of jokes in which one of the meanings was sexually impure was fairly low.

Mr. Cargill: You say that some of them do have that?

The Witness: Some of them do have the possibility of that as one of the connotations, but the point I am making is that in none that I have seen is the attention primarily directed toward an obscene meaning.

1163

Mr. Cargill: Would you say that the magazines that you have read, taken as a whole, primarily feature sex?

The Witness: I don't think that I can generalize about the magazines I have seen as a whole, because they are all the way from the Yale Review in which the element of sex is taken up only statistically, to "Pic" and "Look" which I usually don't pick up or look at, but which are always on the tables in the barber shops.

It seems to me they have no common denominator whatever.

1164

Mr. Cargill: And the few magazines, then, that you have read, would you say that they primarily feature sex, or not?

The Witness: It seems to me some do and some do not. It seems to me to be specific in Life, which I habitually see.

Mr. Cargill: I am speaking of Esquire. Would you state that the copies of Esquire which you have read and observed feature primarily sex?

The Witness: They never omit sex. They have also articles on sports and on a dozen other different things, but they never omit a sex element.

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Mr. Cargill: The magazines that you have seen, then, do primarily feature the sex feature?

1165

The Witness: Yes, there is always present the sex feature.

Mr. Cargill: In those magazines that you read, do you think that the articles and pictures and the cartoons and so forth, feature loose morals?

The Witness: No.

Mr. Cargill: Or unfaithfulness?

The Witness: No.

Mr. Cargill: In your opinion, do the pictures and cartoons and reading matter portray the customs of our day as practiced by normal average citizens?

1166

The Witness: I should say so, yes.

Mr. Cargill: You would say they do?

The Witness: Yes. You are referring, are you not—may I ask you one thing before you pass from that question?

Mr. Cargill: Yes.

The Witness: You are talking about the magazines as a whole, not just about the cited material. The cited material does not seem to me to present a cross section of the manners of the day.

The magazines, taking the two which I read from cover to cover, do seem to me to present a fair cross section of masculine interests.

1167

Mr. Cargill: I call your attention particularly to the August issue, page 89. Doctor, what is implied there by the words "Paste Your Face Here"?

The Witness: Cut your own face out of a photograph and actually, with glue or some other adhesive, put it on the spot vacated by the head of the sailor.

Mr. Cargill: Aren't you reading something there

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1168

which is not there when you say "cut your photograph out"? It says, "Paste Your Face Here." Does it say, "paste your photograph here"?

The Witness: I think that is to be construed in the light of the others of the series.

Mr. Cargill: But the others in the series are not in that book, are they?

The Witness: No. I see the double meaning that you imply there. It would seem to me that the reason why that didn't occur to me before is the direction in which the sailor is facing. The sailor is backed to the girl, not faced to the girl.

1169

Mr. Cargill: Do you think that is a fair representation of the practices and customs of the average citizen of today?

The Witness: No, I was hoping it would not be. I was, in fact, deploring both that and illustrations of similar behavior in Life, because it seemed to me to be going beyond the desirable or existing practices.

Mr. Cargill: Do you feel that the publication of that is a step beyond the pale of decency?

1170

The Witness: No, I think it is a step beyond the pale of desirable conduct for young people. It does not seem to me that either the behavior itself or the representation of the behavior is indecent.

Mr. Cargill: You say that the behavior is not indecent?

The Witness: I say that the behavior is not indecent. I would say the behavior is very ill judged.

I have seen the behavior on the beach and no one interfered to stop it and it is not regarded as indecent. I have actually seen—not a sailor—but a

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young man carrying a young woman, pick-a-back, and it doesn't seem to me to be desirable, but I don't think it is obscene or indecent.

1171

Mr. Cargill: Would you say the implication there is indecent?

The Witness: No, I think the implication is that what I am calling undesirable and injudicious, and I think the objectionable part of the "Paste Your Face Here" from my point of view is that it does all the more identify the person who puts his face there with the conduct, and tends to make him think of himself as participating in that experience.

1172

Mr. Cargill: I call your attention, Doctor, to page 65 of the September issue.

The Witness: The milkman cartoon?

Mr. Cargill: Yes.

The Witness: Yes, sir.

Mr. Cargill: Would that indicate to you immorality or adultery?

The Witness: Immorality or what?

Mr. Cargill: Adultery.

The Witness: No.

Mr. Cargill: What does that indicate to you?

The Witness: That indicates that the two wish to be in each other's presence when the husband is not there and adultery is a possible, but not a primarily indicated, connotation out of it.

1173

Mr. Cargill: You are placing the very best construction on that, aren't you, Professor?

The Witness: Yes, that is the very best construction. I am not saying for a moment that that is not a coarse picture. I am saying that it is not an obscene picture.

*Herbert W. Smith—for Respondent—Redirect:*

1174

Mr. Cargill: You don't think that that would indicate indecency?

The Witness: I don't think that that would be an excitement to indecent conduct.

Mr. Cargill: Do you think that that cartoon represents current modes and practices of our times as practiced by the average married man and married woman?

The Witness: No, I do not.

Mr. Cargill: It does not depict the customs of the average man or woman?

1175

The Witness: It does not depict the customs of the average man or woman.

Mr. Cargill: Do you think that the publication of these two pictures that I call to your attention there come within the definition of decency?

The Witness: Yes.

Mr. Cargill: That is all.

Chairman Myers: Mr. Smith, is it not a fact that all great literature is built upon sex?

The Witness: No, I should not think that it were, although I have heard the statement made.

Chairman Myers: Are you familiar with Homer's Iliad?

1176

The Witness: Yes.

Chairman Myers: What about Achilles sulking in his tent?

The Witness: That was caused by jealousy.

Chairman Myers: Of a woman?

The Witness: Agamemnon.

Chairman Myers: A concubine?

The Witness: Yes, about half composed of desire for the concubine.



*Herbert W. Smith—for Respondent—Redirect.*

Chairman Myers: And Dido in Virgil's *Illiad*? 1177

The Witness: Yes.

Chairman Myers: Is that built upon sex?

The Witness: Yes.

Chairman Myers: How about Dante's *Inferno* or all of Dante's work in relation to it?

The Witness: Yes.

Chairman Myers: How about Shakespeare's plays?

The Witness: From none of them is sex absent.

Chairman Myers: Is there a single play in which sex does not appear?

The Witness: That is a large order. I would have to reflect on that. May I say what I had in mind when I said "no," to your initial question? I think a poem such as "I have a rendezvous with death"— 1178

Chairman Myers: And now, let me ask, do you teach classic Greek and Latin?

The Witness: Latin, I wish we taught Greek, but we do not.

Chairman Myers: Are you familiar with the statue of the discus thrower?

The Witness: Yes.

Chairman Myers: Does that appear in children's schools and colleges? 1179

The Witness: Very commonly.

Chairman Myers: Is it a statue of a man absolutely naked?

The Witness: Yes, absolutely naked.

Chairman Myers: Without a stitch on?

The Witness: I might add that putting a stitch on him would make him obscene if put on in the proper way.

*Herbert W. Smith—for Respondent—Recross.*

1180

Chairman Myers: Are you familiar with the story of Suzanne and the Elders and Suzanne in the Bath?

The Witness: Yes, and the painting of it.

Chairman Myers: A little peeping went on there, didn't it?

The Witness: Yes.

Chairman Myers: Where did that story appear?

The Witness: In the Bible.

Chairman Myers: That's all.

Mr. Bromley: That is all.

1181

Mr. Hassell: I want to ask one other question that I intended to ask the Professor on cross and overlooked.

*Recross. Examination by Mr. Hassell:*

Q. Professor, have you discussed Esquire with any other teacher dealing with pupils of the ages in your school? A. Yes.

Q. Did they have the same views that you have, Professor? A. Well, I didn't take a full day and express my views as they were, but so far as I know our views coincide.

1182

Q. Would you undertake to say what you know of other teachers' attitude? That your attitude with respect to Esquire is one generally accepted among the teachers? A. I don't think the teachers would agree universally on anything, but I think that you would find a very considerable number of other teachers who would agree with me about it, yes.

Q. You would be surprised if the Post-Office Department had, since the mention of this in the press, received letters from teachers commending the action it took? A. No, I wouldn't be surprised at all.

*Louis J. Croteau—for Respondent—Direct.*

Mr. Hassell: That is all.

Mr. Bromley: That is all. Thank you, very much.

1183

(Witness excused.)

Chairman Myers: We will adjourn until 1:15.

(Whereupon, at 11:53 o'clock a. m., the hearing was adjourned until 1:15 o'clock p. m.)

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AFTERNOON SESSION.

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1184

(The hearing was resumed, pursuant to the adjournment, at 1:15 o'clock p. m.)

Chairman Myers: Are you ready with another witness?

Mr. Bromley: Yes.

Mr. Hassell: At this point I would like to enter a further objection to the testimony of the witness who just preceded, Mr. Smith, and move that his testimony be stricken as irrelevant and immaterial to this inquiry.

1185

Chairman Myers: The same ruling as heretofore.

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LOUIS J. CROTEAU, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Bromley:*

Q. What is your name, sir? A. Louis J. Croteau.

Q. You live where? A. Burlington, Massachusetts.

*Louis J. Croteau—for Respondent—Direct.*

1186

Q. You are engaged in what business, Mr. Croteau? A. I am the executive officer and secretary of the New England Watch and Ward Society.

Q. What is the New England Watch and Ward Society?

A. The New England Watch and Ward Society is a social service agency engaged in the private and independent enforcement of the law throughout the six New England States.

Q. Engaged in the enforcement of what kind of law? A. Of all criminal violations tending to be commercialized.

1187

Q. Does that include a watch on current magazines and current books? A. Yes, sir; that is one of the phases of our work.

Q. Would it be correct to say that your organization is perhaps the outstanding censorship organization existing in this country today? A. It has been referred to as being the outstanding censorship organization in this country as well as in other countries.

1188

Q. Now, just what kind of organization is it? Who are its directors and officers, and tell us something about its composition? A. The organization was founded 65 years ago by Phillips Brooks and John P. Allen. Its board of directors is composed of representative laymen, ministers, and professional men. Its membership is composed of a fairly accurate cross section of New England community life.

Q. And it keeps a watch generally over what part of human activities of that community? A. It has often been dubbed the watch dog of New England morals. It is engaged in enforcing the laws against gambling, narcotics, prostitution, indecency in theatrical productions, magazines, books, pictorial periodicals, child delinquency, and with anything having to do with the uplift of the morals of our community life.

*Louis J. Croteau—for Respondent—Direct.*

Q. Could you name representative members of your board of directors? A. Yes, sir. Godfrey Lowell Cabot, honorary president, and Charles H. Fleming is our president. I might say Dr. Cabot is a doctor of science and Mr. Fleming is an executive of the New York Life Insurance Company. And Stiles F. Keddy, our treasurer, is a civil engineer. And our doctors of divinity, ministers, laymen, and just ordinary every day average men who are engaged in several types of work.

1189

Q. Do you have investigators? A. Yes, sir, we do.

Q. And do those investigators by field work, actively keep themselves informed, and your directors and yourself informed, by reports of what is going on in theatrical productions and the magazine field and other fields you have mentioned? A. Yes, sir.

1190

Q. The investigators— A. The investigators are assigned to field work and are directly responsible to the executive officer who, in turn, is responsible to the board of directors. The board of directors lay out the policies to be adopted, and the executive officer sets them in motion.

Q. For how long a time have you been executive officer of the society? A. Since April 1941.

Q. For how long a time have you been connected with the society? A. Since 1928. I started as an agent.

1191

Q. As an investigator in the field? A. That is right, sir.

Q. Are you here with the knowledge and permission of your board of directors? A. Yes, sir, I am.

Q. Does your organization examine each month, or each week, or some other period, current magazines? A. Yes, sir. Approximately we examine throughout the year about 125 different types of publications, that is, the different titles amount to about 125. Roughly, some 800 to 900 different issues of magazines are examined.

*Louis J. Croteau—for Respondent—Direct.*

1192 Q. Now, do you do all or a part of that work in the magazine field yourself? A. I make what we term the preliminary examination of the magazines or books in question. They are then turned over to a literary committee comprised of three men, who are, four times per year, named by the chairman to serve on the literary committee.

1193 Ordinarily that committee is made up of a counsel, a lawyer, who is a member of the board, a minister and one of the laymen. Three of the directors of the society have refused from time to time to serve on the literary committee because they openly admit that they are prejudiced and have closed minds and could not fairly pass upon the examination of any periodical submitted to them.

1194 Q. Now, what do you do when you examine a magazine which is finally determined by your committee to be obscene? Do you have any power to do anything about it? What do you do? A. Ordinarily the procedure is to notify the distributors. I might say at this time that there is a standing arrangement between New England distributors and the Society to the effect that the distributing agency submit anything which in their minds is questionable to the Society for an informal opinion. That process has been in existence now since 1934, at which time there was a radical change in the attitude of the Society and a new policy was adopted, namely, that called a reasonable policy of control.

Q. Do you enjoy your Society I mean, enjoy the cooperation of the distributors of the magazine Esquire? A. Yes, sir; they have always cooperated a hundred per cent.

Q. When a distributor has submitted a magazine to you which you and your committee determine to be obscene, what happens next? A. Well, since 1934 I am happy to report that only one such decision was turned down by the distributor. That particular distributor found himself with-



*Louis J. Croteau—for Respondent—Direct.*

in the clutches of the law three days after he had gone adversely against our report.

1195

Q. You mean that you receive such cooperation from the magazine distributors in New England that if you declare that a publication is obscene, they discontinue its publication and sale altogether? A. Yes, sir; I mean that they rely on our judgment to that extent.

Q. And in only one instance that you can recall has it been necessary to go to law because in all the others the magazine hasn't been sold or distributed after you had condemned them. Is that right? A. That is correct, sir.

Q. Does your Society enjoy the cooperation of the Federal postal authorities? A. It does. To my knowledge, it always has.

1196

Q. I take it, then, that in the course of your regular duties and business before you ever heard of this procedure you must have examined every one of the eleven issues now under consideration. A. Well, I would say that it is safe to say that I examined at least eight or nine of them.

Q. I suppose it is true, isn't it, that the November issue and perhaps the October issue was not out? A. I believe those are the two that I didn't see.

Q. Did you or your committee or your Society condemn or declare to be obscene any part of any one of the issues now under examination or discussion? A. No, sir.

1197

Mr. Hassell: I object to this questioning of this witness. I submit it is irrelevant and immaterial to the issue here involved. What the New England Watch and Ward Society determines does not have any controlling effect or advisory effect upon this Board or Department. As a matter of fact, this Society is not running this Department. So far as I

*Louis J. Croteau—for Respondent—Direct.*

1198

know, it has no connection with it, none that I heard of, and I have been here 35 years.

Mr. Bromley: I am trying to establish this witness as one of a character for whom you called this morning, i. e., an expert in obscenity, and I think he is competent on that obscenity.

1199

Mr. Hassell: But I would like to say in response to counsel's characterization that I did not call for any expert in obscenity because I don't believe there is any such thing. This Department and the Solicitor's Office and the Post Office Department does not know of such an animal if there is one, because there are some eight or ten thousand rulings to postmasters and postal officials throughout each year that are made on the mailability of material under this statute, but I don't know anybody who claims to be an expert on obscenity. If this gentleman claims to be one, why he certainly is a novelty to me. I haven't called for him, I don't want him, I don't think his testimony is pertinent, and I object to its inclusion in this record.

Chairman Myers: The motion is overruled.

*By Mr. Bromley:*

1200 Q. I want to ask you this: To your knowledge, has your Society ever received a bona fide complaint against Esquire at any time? A. It never has.

Mr. Hassell: I object. What bearing does that have on this issue here, that some organization of some sort received a complaint? Are they supposed to be the keepers of the morals and the enforcers of all Federal and local law? I think it is utterly absurd.

*Louis J. Croteau—for Respondent—Direct.*

Chairman Myers: Well, it is admissible for such persuasive opinion as it may have.

1201

The motion is overruled.

*By Mr. Bromley:*

Q. Now, in your opinion, Mr. Croteau, is there a set standard whereby obscenity can be tested or judged? A. There is no set rule by which any individual or any body of men can test obscenity. There are a multiple number of reasons as to why no two sets of facts are alike. That is why some years ago, as I have told you, we changed the policy of a hard and fast rule on obscenity.

1202

The committee is changed, as I have told you, three times a year, for the purpose of getting a cross section of opinion.

The members who sit on the committee sit there with an open mind and try to decide among themselves in conference the pros and cons of the admissibility of the contents of any magazine or book.

Q. Now, you, yourself, do you have a broad and wide familiarity with the types of articles, pictures, cartoons, drawings and illustrations that appear currently in the magazines of this nation? A. Yes, I have.

Mr. Hassell: I object. This calls, obviously, for a conclusion from this witness. It is leading and it is objectionable for other reasons.

1203

Chairman Myers: What is your purpose, Mr. Bromley? Is it to qualify him as a witness?

Mr. Bromley: To try to show what his acquaintanceship is with all the magazines of the country, if he has that acquaintanceship.

Mr. Hassell: I submit, Mr. Chairman, this does not do anything of the sort. This witness has already

*Louis J. Croteau—for Respondent—Direct.*

1204

said he is qualified. That is what he is asking now.  
is he qualified to pass on obscenity.

*By Mr. Bromley:*

Q. Be a little more specific as to what kinds of magazines you have examined over the years, with particular reference to last year. Name some of them. A. Roughly, I examined anywhere from 60 to 75 publications a month. A good 40 percent of the publications are so-called pulp magazines, a good percentage of them being of the spicy type.

1205

Then you have your True Confessions, True Detectives, Spicy Stories, the cartoon gags called Yoo Hoo and Humor, and any number of publications which I can't recall off-hand, that run in the type that border on the line of the twilight zone in so far as obscenity is concerned.

They are not in themselves, probably, obscene—some of them are. But the editors go just as far as they know how to be humorous and yet stay within the bounds of the law.

Q. Now, do you examine magazines like Esquire, Life, Red Book, Cosmopolitan, Saturday Evening Post, and magazines like that? A. I have examined every one of those, sir.

1206

Q. Will you name some more, if any such occur to you? Have you examined Time? A. I have examined Time and the New Yorker, Spicy Detective, True Detective Tales, Actual Detective.

I find that the detective magazines are the worst of the lot, that with the cheap pulp fictional novels.

Q. Now, have you, at my request, reexamined and made a particular examination of the eleven issues here in question?

A. I did, Mr. Bromley.

*Louis J. Croteau—for Respondent—Direct.*

Q. Could you tell us what the opinion of the Watch and Ward Society is of Esquire as compared to similar publications? A. The Society's opinion of Esquire is favorable as compared to Time, the New Yorker, and other similar publications.

1207

Q. Do you believe that Esquire is in any way harmful to the New England community life or any of the members thereof? A. I certainly do not.

Mr. Hassell: I object to that statement. I don't think this witness has been qualified by anything he has said in my hearing, to pass upon anything affecting morals.

1208

Chairman Myers: He is only answering if he knows.

Mr. Bromley: You have answered then?

The Witness: Yes.

*By Mr. Bromley:*

Q. That is the purpose of your Society, to safeguard the morals of your community, isn't it? A. Yes, sir, that is the fundamental purpose.

Mr. Hassell: Many things, Mr. Chairman, have many purposes. Purpose does not mean anything. All of us probably have every day failed in some purpose. If this Society failed, that would be the thing to be expected.

1209

Chairman Myers: Hasn't this proceeding a purpose? The objection is overruled.

*Louis J. Croteau—for Respondent—Direct.*

1210

*By Mr. Bromley:*

Q. You, yourself, regularly inspect burlesque shows in your community, don't you? A. Five or six every week.

Q. And other types of theatrical productions? A. Yes, sir, all the new shows that come to town.

Q. Indeed, the script or manuscript of plays that open in your community are regularly and invariably submitted to your office in advance for reading, aren't they? A. Yes, sir, and for informal opinion.

1211

Q. And your work also covers all published books, does it not? A. Yes, sir, it does. There is a standing agreement among book publishers just the same as there is with the magazine distributors.

Any book which, in the opinion of the Boston Book Committee, is doubtful is submitted to the office for informal opinion.

Q. And if your opinion is adverse it is not sold by the distributor, is that correct? A. That is correct, sir.

Q. Or by the book stores? A. That is correct, sir. They send out a notice to that effect to all their members, that the book has been deemed objectionable by the New England Watch and Ward Society, and anyone who sells it does so at his own peril.

1212

Q. And if he sells it, there invariably follows a criminal prosecution under your Massachusetts and other state obscenity statutes? A. That is right, sir.

Q. At my request have you made a particular study of all the Varga girl drawings in all of the eleven issues of 1943 Esquire? A. Yes, sir, I have.

Q. Now, will you state to the Board your opinion as to whether there is contained in any of these drawings or verses which accompany them, anything which, in your opinion, is



*Louis J. Croteau—for Respondent—Direct.*

obscene, lascivious, lewd, indecent, filthy? A. After profound consideration of the subjects, I did not find anything that bordered on obscenity, lasciviousness, lewdness or vulgarity, or was in any way filthy.

1213

Q. Will you include, or will you not, the word "indecent"? Did you find them indecent? A. I certainly did not.

Q. Now, have you read the stories such as "The Portrait Over The Fireplace," and "The Sporting Scene" and the other stories of fiction which have been complained of specifically? A. Yes, sir, I have.

Q. What is your opinion with respect to them, as to whether they are indecent and so forth? A. I fail to see that they contain in any part or in their entirety any obscenity, indecency, or lewdness.

1214

Q. Did you read Mr. George Jean Nathan's theatrical column in which he made a reference to a bawdy house and sporting house and quoted from the dialogue of one of the Dead End Kids in Dead End? A. Yes, sir, I did.

Q. What can you say as to whether or not those terms there implied transgress the standard of current morality as you have found it in other contemporary magazines?

Mr. Hassell: I object—

Chairman Myers: That is a pretty broad statement.

Mr. Bromley: I withdraw it.

1215

*By Mr. Bromley:*

Q. Now, sir, have you read those textual articles such as Mr. Seldes review of Star and Garter and the story about the Unsinkable Sailor? All the textual articles, whether fiction or factual, have you read them and studied them? A. Yes, sir, I have, each one.

*Louis J. Croteau—for Respondent—Direct.*

1216

Q: Can you tell us whether, in your opinion, there is anything contained in them which is obscene, lascivious, lewd, filthy, or indecent? A. In my opinion, there is not.

Q. Can you tell us whether or not the same type of material is found in other magazines, reputable magazines?

1217

Mr. Hassell: I object to this question. I think it is ridiculous to have this man sitting up here and say the same type of material is in other magazines. What does that mean? It would take us a month to explore the comparison. He has to compare in his mind one instance here and explain it for the enlightenment of the Board. I think it is utterly absurd.

Mr. Bromley: I submit it is an opinion and perhaps we had better produce what we are talking about. I hate to take a month to do it.

Chairman Myers: Let him answer the question. Objection overruled.

The Witness: My examination of such magazines as Life, Cosmopolitan, Time, especially The New Yorker—I have read articles that in my opinion are far more objectionable and indelicate than anything I have ever witnessed in Esquire.

1218

*By Mr. Bromley:*

Q. Is the use of the term sporting house and bawdy house a commonplace one in current magazines today? A. Yes, it is very commonplace and is being used apparently quite readily by the authors.

Q. Now will you look at page 6 of the January issue, the boxed-in material "Shor Nuff", and particularly to the two references made to juking, and give us your opinion as to

*Louis J. Croteau—for Respondent—Direct.*

whether or not those references are indecent and go beyond current standards of morality. A. There is nothing indecent or even suggestive about juking. It is a term that is used commonly in the amusement world and on the burlesque stages today. It refers to slapstick comedy and entertainment and it is just general hilarity. Juking itself is just a synonym of fun.

1219

Q. You are aware, are you not, that in that article where juking is listed it is followed by the phrase "that's right, just what you're thinking about." A. Yes, sir. I see that it is.

Q. Does that change your opinion with respect to its obscenity? A. Not my opinion. It might some people's opinion.

1220

Q. You see also that it is defined in the left-hand column "juking (this is something Woodhead thought up which puts sex, dancing, manners, drinking and risqué behavior in one package)." A. That would be the opinion that he would have.

Q. Do you think Woodhead's definition of it is indecent? I mean as printed on that page? A. It is not in good taste and it is not an accurate expression of juking.

Q. But you still don't find it obscene or indecent? A. I do not.

1221

Q. Now what have you to say with reference to "Dear Doctor Diddle" on page 123? Is that an indecent, filthy expression as used there? A. I fail to see that there is anything indecent or obscene in that article. "Dear Doctor Diddle," diddle, if my memory serves me right is defined to borrow, to spend away, to fool time away. I think that is what it is meant in this particular issue.

Q. Can you tell me, Mr. Croteau, as an expert, whether there is any filthy meaning in this joke:

*Louis J. Groteau—far Respondent—Direct.*

1222 "Dear Doctor Diddle: I am a beautiful brunet but I have a serious problem. Everytime I take a bath I blush. What shall I do?

"Dear Twenty: Before you undress put on a blindfold."

Is there any hidden reference in there? A. Not unless the subject who is reading it wants to infer a hidden application to that particular thing. A good deal of this depends a good deal upon the state of mind of the individual who is reading it. Pre-adolescents may have one idea and adolescents may have another, and full-grown, mature persons who are right down to earth and not sex perverts or degenerates can read that and enjoy some clean slapstick comedy out of it.

1223

Q. Is there any hidden dirty meaning that I don't see because I don't see it? I mean, based on your experience?

A. Perhaps I am pretty naive, but I fail to see that there is any inference of obscenity or indecency in it.

Q. What about this air warden cartoon, the two men looking through the skylight. Does that transgress current standards of morality?

Mr. Hassell: What page is that?

Mr. Bromley: 137.

1224

The Witness: I don't believe that it does. I mean there is nothing in the connotation that tends to break down the subject at hand. It is not amplified by anything that appears in the cartoon, and there are several inferences which may be drawn from his remark.

*By Mr. Bromley:*

Q. Now, does that make it obscene or indecent because there are several inferences which could be drawn, in your

*Louis J. Croteau—for Respondent—Direct.*

opinion? A. Hardly so. In my opinion, the worst that could be said about it, and probably coming down to the inference that could be the worst that would be drawn from it, would be that it would be indelicate. I think what it is, and I think I have reason to believe that is what he is thinking about, is that probably through the skylight he sees an artist's model and there is nothing indecent or obscene about seeing an artist's model in an artist's studio.

1225

Q. Is it commonplace today for magazines to print cartoons showing artist's models, or studios in which models are posing and make a joke about it? A. Yes, sir. As a matter of fact, I believe in some of the magazines I reviewed in the last few days there were three or four such references.

1226

Q. Then you think it is common to have that happen?  
A. Very common.

Q. I show you The New Yorker for March 6, 1943, the cartoon on page 19. Isn't that one to which you refer? A. Yes, sir, it is.

Mr. Hassell: Now, I want to object to the introduction of other magazines here. This Board is not charged by the order of the Postmaster General to inquire into the merits or lack of merits or what not respecting other magazines, and I think this is incompetent, irrelevant, and immaterial and should not be admitted.

1227

Mr. Bromley: It seems to me to be matter to demonstrate what current standards are in other magazines.

Mr. Hassell: I submit you cannot possibly demonstrate that, Mr. Chairman, unless you put in everything and we would be here a hundred years at least.

*Louis J. Croteau—for Respondent—Direct.*

1228

Chairman Myers: Have you any authority on that, Mr. Bromley?

1229

Mr. Bromley: No, not specifically that I can recall. However, it seems to me to be implicit in the decisions that the only way you can judge what the current standard of morality is is to demonstrate in some fashion that it has become commonly accepted for reputable publications to use a word like "son-of-a-bitch", or for newspapers to do it. Now, the only way you can do it is to produce the papers. If it is commonplace and you find it in other magazines, that kind of material, namely, similar in content, and you find references in reputable magazines which presumably pass public inspection without condemnation, at least without barring, it seems to me it would tend to help you to determine just how far we have gone in the critical conflict between candor and shame.

Chairman Myers: The reason I asked that question was in a recent trial a decision was cited from the Court of Appeals of New York, I think from the Court of Appeals, on that very subject, holding that it was admissible.

Mr. Hassell: I submit, Mr. Chairman—

1230

Mr. Bromley: You see how I am hampered by my assistants. They didn't find it.

Mr. Hassell: The opinion that the Chairman has in mind is undoubtedly one from the Second Circuit Court of Appeals in which the Court referred to the classification of works of literature, books. The decision dealt with books and it was to determine whether or not the book was a literary classic. We don't have that here.



*Louis J. Croteau—for Respondent—Direct.*

Chairman Myers: No, that was not the question I had in mind. It was the question of comparative merit. I don't recall the case. I thought Mr. Bromley did. 1231

Read the question, Mr. Reporter.

(Record read.)

Chairman Myers: You are limiting it to a particular cartoon in The New Yorker?

Mr. Bromley: Yes, sir, that is all.

Mr. Cargill: Are you now introducing The New Yorker magazine, or are you introducing the one cartoon, just that? 1232

Mr. Bromley: Just the cartoon.

Chairman Myers: It may be admitted. The motion is overruled.

Mr. Hassell: Mr. Chairman, by my remaining silent I, of course, am not depriving myself of the customary exception.

Chairman Myers: Of course, you are entitled to it.

Mr. Hassell: The record will show it.

Chairman Myers: You will have it.

Mr. Hassell: That I stand on the objection?

Chairman Myers: You will have your exception whether you take it or not, and we will announce that that will be the rule to be followed. Counsel sometimes get too busy and sometimes they forget to take an exception, but if some judge should raise the question on that point, we will announce here that if an exception is not taken to a ruling of the Board that we will consider it as having been taken. 1233

(The document referred to was marked Respondent's Exhibit No. 1, and received in evidence.)

*Louis J. Croteau—for Respondent—Direct.*

1234

Mr. Hassell: May I ask the witness a question?

Chairman Myers: Would you like to see it first?

Mr. Hassell: No, not now, thank you. With respect to the authenticity of this document.

Chairman Myers: I don't believe perhaps you can. It is received.

Mr. Hassell: Just a question.

Chairman Myers: Go ahead.

*By Mr. Hassell:*

1235

Q. Mr. Witness, you know you are under oath? A. Yes, sir.

Q. You understand you are now? A. Yes, sir.

Q. You know that this is the copy of the New Yorker of this issue that was actually circulated throughout the United States? A. I do not, sir.

Q. You can't so testify? A. No, sir, I cannot.

Mr. Hassell: I object to it.

Chairman Myers: On that ground it probably would go out.

1236

Mr. Bromley: Well, let the Board accept it subject to verification. I will call somebody from the New Yorker.

Chairman Myers: Yes. Suppose we just accept it subject to the verification so we may proceed.

*By Mr. Bromley:*

Q. On the same subject I show you what purports to be the issue of the New Yorker for August 7, 1943, page 14, the cartoon at the bottom of the page. A. Yes, sir.

Q. Is that one of those cartoons to which you had reference in your answer?

*Louis J. Croteau—for Respondent—Direct.*

Mr. Hassell: The same objection.

The Witness: Yes, sir, it is.

1237

Mr. Bromley: I offer it in evidence.

Mr. Chairman: It will be received subject to verification at a later time.

(The document referred to was marked Respondent's Exhibit No. 2, and received in evidence.)

*By Mr. Bromley:*

Q. Now, I show you what purports to be a copy of Colliers for February 6, 1943, and direct your attention to page 30, the only cartoon appearing on that page, and ask if that is one of the cartoons you had reference to in your answer?

1238

Mr. Hassell: Objection.

Mr. Bromley: I offer it in evidence.

Chairman Myers: The same ruling. It is admitted subject to verification later on.

(The document above referred to was thereupon marked Respondent's Exhibit No. 3 and was received in evidence.)

Chairman Myers: You had better keep those all together, Mr. Bromley, for purposes of verification.

1239

*By Mr. Bromley:*

Q. Do you remember the poem "Benedicts, Awake!" in the January issue at page 45? A. Yes, sir, I do, quite well.

Q. Do you find anything indecent or obscene in that poem? A. If anything, it is laudable.

*Louis J. Croteau—for Respondent—Direct.*

1240

Q. In the February issue we have the first example of a Sultan cartoon, of which there are several, and I direct your attention to that one on page 65. Will you tell us whether or not in your opinion that is anything obscene, lascivious, lewd, filthy or indecent? A. In my opinion, there is not an obscene, lewd, indecent or filthy thing about the character of the cartoon or its subject.

Mr. Hassell: I didn't get the answer to the question.

Chairman Myers: Let the reporter read the question, please.

1241

(Question read.)

*By Mr. Bromley:*

Q. In connection with this matter I show you what purports to be a copy of the New Yorker for September 11, 1943, and the cartoon in the right-hand lower part of page 27. A. Yes, sir.

Q. Is that an example of contemporary cartoons?

1242

Mr. Hassell: I object. Is this one of the issues that has already been marked?

Mr. Bromley: No, it is another one.

Mr. Hassell: I object.

Mr. Bromley: I offer it in evidence.

Chairman Myers: Same ruling. It is admitted, subject to verification later on.

(The document above referred to was thereupon marked Respondent's Exhibit No. 4 and was received in evidence.)

*Louis J. Croteau—for Respondent—Direct.*

**By Mr. Bromley:**

1-43

Q. In connection with "The Unsinkable Sailor", the story in the February issue, and the reference on page 95 in the first column, near the middle, the term "sonovabitch" occurring in the sentence: "The first sonovabitch that moves I'll cut his head off! They left the room—but I went to the hospital," I show you the New Yorker for April 3, 1943, and direct your attention to the middle of page 56, which is a part of the story appearing in that magazine entitled "A reporter at large", beginning on page 44, and ask you whether or not that is an illustration of the current use of the word mentioned in that magazine?

1-44

**Mr. Hassell:** I object.

**Chairman Myers:** Same ruling. You will have that marked for identification, will you, Mr. Bromley?

**Mr. Bromley:** Yes.

**The Witness:** In my opinion it runs along the trend of the modern standards that are accepted to-day in all such periodicals as this.

**Mr. Bromley:** I offer in evidence what I have marked in pencil on page 56.

**Chairman Myers:** Subject to verification later on, Respondent's Exhibit No. 5, encircled with lead pencil on page 56, is admitted.

1245

(The document above referred to was thereupon marked Respondent's Exhibit No. 5 and was received in evidence.)

**Mr. Hassell:** Mr. Chairman, in view of the fact that the Board is going to admit these excerpts from

*Louis J. Croteau—for Respondent—Direct.*

1246

these magazines, I would make this request: That the entire magazine be admitted for consideration if you are going to admit any of it.

I think it is unfair to the magazine that is being dragged in here without its consent, to have some objectionable passage that probably it itself is ashamed of, put out in this way and, one swallow does not make a summer, one piece of dirt does not make a dirty magazine.

1247

The issue we have here occurs over a period of eleven consecutive issues and not an isolated instance here and there. It is a cumulative building up of a mountain of dirt.

Chairman Myers: Is there any objection to Mr. Hassell's request that the entire magazine go in in each instance?

Mr. Bromley: No, sir.

Mr. Hassell: If that is agreed to I won't insist on the proving of these matters.

Mr. Cargill: Did I understand you to say you want the whole magazine in?

Mr. Hassell: I don't want any of it in, but in consideration of the Board's admitting any of it, I want it all.

1248

I am not withdrawing my objection as a whole or in part.

Chairman Myers: Mr. Hassell's objection will stand in the record as originally made, but the magazines will be admitted as a whole in each instance, and I understand the matter of verification is now waived also.

Mr. Hassell: Yes, sir.



*Louis J. Croteau—for Respondent—Direct.*

*By Mr. Bromley:*

1249

Q. I direct your attention specifically to page 95 of "The Unsinkable Sailor" in February to the description of the sailor's conversation with the union hall secretary, including the phrase: "How's chances to lower the boom on you, sister?", and ask if that phrase goes beyond that accepted in reputable magazines of today by way of descriptive language? A. The sentence is not obscene in itself, because of the very fact that it is commonly used by merchant seamen today.

As I understand it, it is an expression that is a counterpart of "Let me put the arm on you," or "Let me give you a touch."

1250

In other words, he is trying to get a loan from her. In itself, it is not indecent and, beyond that, it is a very commonplace use of language of the modern times.

Q. Now, anybody who has any familiarity with the sea or sailors knows that the word "boom" as used in that sentence refers to a cargo boom on a merchantman, do they not? A. Yes, sir, they do.

Q. Now, did you read the article of Mr. Gilligan in the April issue, the "Court of Lost Ladies", the night court story? A. Yes, sir, I did.

Q. What is your opinion of that article and the words and phrases used therein? A. I think Mr. Gilligan was very delicate in handling a very sordid piece of business. I am frank to admit that if I had to be touchy about such things I would have to throw out the window ninety per cent of my agents' reports.

1251

Q. And I show you *Cosmopolitan* for February, 1943, and direct your attention to an article by Francis Wickware entitled: "Our Teen Age Crime Wave," and ask you whether

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1252

or not that is an example of the same kind of reporting as Gilligan's article?

Mr. Hassell: I object, the same objection as heretofore.

Chairman Myers: Subject to Mr. Hassell's original objection, it may be marked for identification.

Mr. Bromley: I offer it in evidence, being the article on page 26. I am offering the whole magazine.

My purpose in offering it is to call the Board's attention to the article beginning on page 26 entitled "Our Teen Age Crime Wave."

1253

Chairman Myers: Subject to Mr. Hassell's original objection, it may be admitted.

(The document above referred to was thereupon marked Respondent's Exhibit No. 6 and was received in evidence.)

*By Mr. Bromley:*

Q. Still further in connection with the Gilligan article in the April issue, I show you Time of March 29, 1943, and call your particular attention to page 46, an article entitled: "Health."

1254

Mr. Hassell: I object; the same objection as made heretofore.

Chairman Myers: If you desire, Mr. Hassell, we will have the reporter note the same objection to any one of these that are of like nature and effect, and let the record show that Mr. Hassell will have an objection to the introduction of such pieces of evidence, and an exception also is granted.

Mr. Hassell: Very well.

*Louis J. Crockett—for Respondent—Direct.*

*By Mr. Bromley:*

1255

Q. Is that an example of the same kind of reporting that Gilligan did? A. Yes, sir, it is.

Mr. Bromley: Will you mark that magazine, please?

(The document referred to was thereupon marked Respondent's Exhibit No. 7 for identification.)

Mr. Bromley: I would like to call specific attention of the Board to parts of this article:

1256

"A House Naval Affairs Committee last week made plans to investigate an age-old problem."

And further:

"The agencies' first aim was to eliminate the red light district. This project annoyed many Army commanders, who argued that running prostitutes into the street would only increase the difficulty of venereal control. 'Nonsense', said Charlie Taft: 'A housed harlot could infect 20 to 75 soldiers a night, while the problems of a street walker limited the number of her prospective customers to five or six, and red light districts tend to advertise the product.'"

1257

And further on:

"Messrs. Taft and Parran and their committees had also persuaded most better class hotels to keep a sharper eye on their bellboys' habit of sneaking in 'call girls.'"

And farther down:

"Lieutenant Commander Michael Wishengrad, the Navy's New York venereal disease control officer, said that non-professional pick-ups between 15 and 19,

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1258

accounted for three out of four infections. 1800 random cases reported to Washington indicated at least 64 per cent of infection came from 'amateurs'.

"Lieutenant Commander Clarence J. Buckley, Wishengrad's Philadelphia counterpart, put the figure higher: 'These kids outnumber the streetwalkers four to one.'

1259

"From Mexican workers now occupying San Antonio's famous 'Spictown cribs', the rate of delinquency among young girls had increased 350 per cent in two years. One of every four girl 'car hops' at the city's drive-ins were found to be venereally infected. Said a social worker among the professional prostitutes: 'The girls are sore as all get out. They say the young chippies who work for a beer and sandwich are cramping their style.'"

Chairman Myers: Isn't that a little different thing from what we have here? Does that not relate to medical and scientific matters?

Mr. Bromley: It relates to what the House Naval Affairs Committee found in their investigation.

Chairman Myers: Esquire does not attempt to deal in scientific or medical articles, does it?

1260

Mr. Bromley: It has articles of general interest in every issue and many among them report in the same serious vein as Gilligan does. Gilligan takes a night court and reports what he sees in an evening in a night court, and the House Naval Affairs Committee reports what it finds in Army centers.

Chairman Myers: I had in mind the Parmelee case, which is a little different than what we have here.

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Mr. Bromley: But I think the frankness of this language published in *Time*, which has a larger circulation than *Esquire* by several hundred thousand—I suppose *Time's* subscription list is as large as any magazine in the country—and it is exposed to children to read every day of their school lives.

1261

Mr. Hassell: I take it that counsel's statement will not be considered as evidence, Mr. Chairman.

Chairman Myers: Oh, no.

*By Mr. Bromley:*

Q. In the May issue, Paul Gallico's article: "The Savage Beast In Us."

1262

I take it, Mr. Croteau, you are pretty familiar with burlesque? A. I should be after all these years.

Q. Do you find anything indecent, lewd, lascivious, filthy about that description of burlesque as Gallico wrote? A. No, sir, it is not. It is a very fair and accurate description of burlesque as it exists today, even up to the point of the pictorial exhibits on the two pages.

If you like, I can define each of them.

Q. I wish you would. I think the Board might like to know what those pictures are. A. This first picture is ordinarily construed as the entrance of the strip tease artist.

1263

Q. She is fully dressed? A. She is fully dressed. The second picture shows her in the process of removing her clothes and strutting up and down the boards, as we say.

The third picture shows her in what we term a "grind".

Q. What is a grind? A. A grind is a muscular movement by the subject of her torso.

The other picture depicts a "bump", which, again, is a combination of the grind with a very convulsive jerk at

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1264

different musical bar intervals, usually aimed at some patron down in the first or fourth or fifth row.

It is not at all in good taste, probably in many instances it is considered indecent.

Nevertheless, it is the accepted standard of the stage today.

This particular girl apparently is a chorus girl doing the number called the can-can or, at least, the movement there implies she is doing the can-can.

This is what is called a "back line girl", usually used purely as a posing individual. In other words, used to dress up the scene.

1265

Q. You refer to the top picture on page 33? A. That is right, sir.

Q. And the can-can is the one where her skirts are all fluffed up about her legs? A. That is right. I might add that there is—

Mr. Hassell: I object to any voluntary statement here.

*By Mr. Bromley:*

1266

Q. So that it won't be voluntary, what were you going to add?

Mr. Hassell: I object to that question. I think it is an entirely improper question.

Chairman Myers: You had better ask him another question.



*Louis J. Croteau—for Respondent—Direct.*

*By Mr. Bromley:*

1267

Q. Is there any other material in any of the other issues to which you desire to call our specific attention? A. None that I can recall right now.

Q. I can't worm that out of you, can I?

Is there any material in connection with the burlesque article you wanted to refer to? A. No, none at the present.

Mr. Cargill: At this point I would like to say, and I think this is the consensus of opinion, among the judges, that the witness should feel free to say what he pleases subject to objection and ruling.

1268

Mr. Bromley: Yes, sir.

The Witness: Well, to elaborate on the burlesque article, I was going to point out as a matter of contrast, being in this so-called dirty sort of business, I visited your local burlesque house night before last to compare burlesque productions in Washington with them as we see them in New England, and the strip of Jardinere, who appeared there was in great part such an exhibition as is shown in the picture and what appeared in this article.

Mr. Hassell: I object to that. It calls for a conclusion of this witness: That doesn't give any picture to this Board as to what he is talking about.

1269

Chairman Myers: He is speaking as an expert, he is an expert on burlesque in Washington.

*By Mr. Bromley:*

Q. I call your attention to the picture of the girls from "By Jupiter", in the July issue at page 76, and ask you

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1270 whether you consider that to be obscene or indecent? A. It is not obscene or indecent.

Mr. Bromley: Now, I offer in evidence the copy of Life for September 6, 1943, and ask that it be marked.

Mr. Hassell: The same objection.

Chairman Myers: The ruling will be the same as the previous ruling.

1271 (The document referred to was thereupon marked Respondent's Exhibit No. 8 and was received in evidence.)

Mr. Bromley: I would like to refer the Board specifically to pages 69, 70, 71 and 72, which is a review of the show "Good Night, Ladies" in its 73rd week. "This undraped farce set Chicago records."

Mr. Hassell: I have not heard as yet a question directed to this witness respecting this magazine.

Mr. Bromley: I will think one up.

*By Mr. Bromley:*

1272 Q. Does that represent current day standards in the magazine publishing field, so far as the reproduction of pictures of undraped females is concerned? A. It is a fair representation.

Mr. Hassell: I object to the characterization of "undraped females". There is no such thing in this magazine. There was no such thing in that play. I saw it.

Mr. Bromley: You went to it?

Mr. Hassell: Yes, sir, I saw that very show.

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*By Mr. Bromley:*

1273

Q. Will you look at the pictures on the four pages and tell me whether or not you think those are pictures of undraped females? A. I can't say much about this on page 69. This on pages 70 and 71, that on page 70 is a fair representation of an undraped female. That on page 71 is what is known to the trade as shadow shots.

Q. The shadow shots are of a woman in a shower bath with no glass? A. Yes, they are.

Q. With a man peeking through the glass door at her? A. Two men, to be exact.

1274

Q. Two men? A. Yes.

Q. Now, on the next page. A. On page 72 are pictures numbered 5, 6, 7, 8, and 9, which would be fair representations of undraped females. The others are not, in my opinion.

Mr. Bromley: Now I offer in evidence Life for July 5, 1943, and ask that it be marked.

Mr. Hassell: Same objection. Are you offering the whole thing?

Mr. Bromley: I will specifically refer to pages 86, 89, and 90.

1275

*By Mr. Bromley:*

Q. Would you say that those pages which I show you represent current standards in the publication of pictures of women, in the field known as leg art? A. From my observation, yes. I might add that this is one magazine that I saw before coming to Washington. As a matter of fact, I examined it at about the time it was released.

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1276

Q. Do you find anything more objectionable in the picture in the issue of August Esquire on page 127 entitled "Hew To The Line Bertha, Let The Skirts Fall Where They May." A. I do not.

Mr. Bromley: I would like to show the Board, if I may, the pictures I have reference to (handing).  
Chairman Myers: It will be received.

(The picture referred to was marked Respondent's Exhibit No. 9, and received in evidence.)

1277

*By Mr. Bromley:*

Q. I direct your attention to page 66 of the September issue of Esquire which is the courting scene of the young people who work nights in the war plant and who are passionately embracing while on a couch while in the presence of the mother and the maid. Do you find anything filthy or obscene about that? A. I think it is a fair representation of probably what takes place in a good many homes in these times.

1278

Q. Also do you recall a similar cartoon in which the sailor is kissing the girl, and the parents standing in the doorway, and the sub-title is that he tells her he is sailing each night, which appears on page 84 of the same issue? A. Yes, sir, I do recall it.

Q. Is your answer the same with respect to that cartoon? A. Yes, sir, it is.

Q. Do you find the same thing in probably almost the same detail in the New Yorker for March 20, 1943, at page 19? A. Perhaps with the exception that it is not in color-plate, yes.

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Mr. Bromley: I offer the issue of March 20, 1943, of the New Yorker in evidence.

1279

Chairman Myers: It may be marked for identification by the Reporter, first.

(The document referred to was marked Respondent's Exhibit No. 10, for identification.)

Mr. Bromley: I call your attention specifically to page 19 of the cartoon appearing thereon. May that be received in evidence, if the Chairman please, rather than just marked for identification?

Chairman Myers: It may be received, subject to the conditions heretofore stated.

1280

(The document heretofore marked Respondent's Exhibit No. 10, for identification, was received in evidence.)

*By Mr. Bromley:*

Q. Still further in connection with burlesque, I show you an issue of Time for August 2, 1943, particularly the picture on page 44 of Ann Corio. Would you say that that was typical of those times in so far as the publication of pictures of burlesque performers? A. Yes, sir, it is.

1281

Q. Who is Ann Corio? A. Probably the outstanding burlesque queen in the country today. She has a particularly unique way of presenting the striptease.

Q. Are you able to tell us whether or not in that picture her umbilicus is prominently displayed? A. Yes, sir, it is.

Mr. Bromley: I offer the issue of August 2, 1943, in evidence.

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1282

Chairman Myers: Mark it for identification, first.

(The document referred to was marked Respondent's Exhibit No. 11, for identification.)

Mr. Hassell: You almost have to use your imagination to tell that is a woman, Counsel.

Chairman Myers: It may be received in evidence, subject to the previous conditions.

1283

(The document heretofore marked as Respondent's Exhibit No. 11, for identification, was received in evidence.)

Mr. Bromley: Will you mark for identification the issue of Yank of September 16, 1942?

(The document referred to was marked Respondent's Exhibit No. 12, for identification.)

Mr. Bromley: I offer in evidence the magazine Yank, issue of September 16, 1942, and I call particular attention to page 18, to the picture thereon.

Chairman Myers: Have you any questions to ask about this one, Mr. Bromley?

1284

*By Mr. Bromley:*

Q. I want to ask you if that is the picture of the well-known stripper Gypsy Rose Lee? A. Yes, sir, it is.

Q. She appears there by her married name, does she not? A. Yes, sir.

Q. Mrs. Alexander Kirkland? A. That is right.



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**Chairman Myers:** Received in evidence.

1285

(The document heretofore marked Respondent's Exhibit No. 12, for identification, was received in evidence.)

**Mr. Bromley:** Mark for identification, please, the issue of Life of July 12, 1943.

(The document referred to was marked Respondent's Exhibit No. 13, for identification.)

*By Mr. Bromley:*

1286

**Q.** I call your attention to the upper left-hand picture in an article about San Francisco, sub-titled, "Fun In A Night Club."

**Mr. Hassell:** What page?

**Mr. Bromley:** 78.

*By Mr. Bromley:*

**Q.** I ask you whether or not that is a typical example of pictures which are published of stripteasers in reputable magazines? **A.** I would say that it is a very good example.

1287

**Mr. Bromley:** I offer that magazine in evidence.

**Chairman Myers:** What page are you referring to here?

**Mr. Bromley:** Just the one page, page 78, the upper left-hand corner. The picture of the stripteaser and the sub-title.

**Chairman Myers:** It may be received in evidence.

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1288

(The document heretofore marked Respondent's Exhibit No. 13 for identification, was received in evidence.)

Mr. Bromley: Mark for identification, please, Time magazine for February 15, 1943.

(The document referred to was marked Respondent's Exhibit No. 14, for identification.)

*By Mr. Bromley:*

1289

Q. I show you page 40, and call your attention to the article entitled "Shall I Have This Baby?" with the picture of editor Malloy, under which is the sub-title "Goo Is Salable In War Time, Too."

Would you say that that was an example of text similar to what appears under Esquire's column about "Dear Doctor Diddle"? A. In substance, yes, sir, it is very similar.

1290

Mr. Bromley: I offer in evidence the issue of Time, of February 15, 1943. I just want to call attention to this: This has reference to a column that appears in the Chicago Herald-American every day. Here is a sample of it:

"I am 19. I foolishly trusted a man whom I met at a picnic. We talked of marriage. Later I found he was married. I no longer care for him. But what am I to do about our child? Added to that problem I have met a sailor from Boston who has fallen in love with me. Shall I have this baby and say nothing to the sailor? He does not know.

"Have your baby. Do not mention your condition to the sailor."

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"My husband was classified in 1-A and, of course, was called. All our friends are married and kept asking this one man to be my escort (at parties). I did not mind his company. Now I yearn for it. I am beside myself. We are both in love. What am I to do?"

1291

"Tell him if he is half the man your husband is he will not tempt you further."

"My daughter is in a pitiable condition. She is not yet 18 and about to give birth to an illegitimate child. The father is a married man who is in the service. He took my daughter to a tavern and gave her the first drink she ever had."

1292

"You can take action against this inn keeper."

Chairman Myers: Respondent's Exhibit 14 is received in evidence, subject to the previous conditions.

(The document heretofore marked Respondent's Exhibit No. 14, for identification, was received in evidence.)

*By Mr. Bromley:*

Q. Now, Mr. Croteau, you recall the recurring feature of Esquire, the double page spread entitled "Goldbricking With Esquire" containing the Army camp jokes from the different Army camp papers? A. Yes, sir, I do.

1293

Q. Have you read and studied each one of them? A. Yes, sir, I did.

Q. Do you find anything in any of them which is obscene, indecent, lewd, lascivious, or filthy? A. I do not.

Q. In the September issue, page 65, is a cartoon of the milkmaid and the husband at the backdoor, sub-titled "Come back later, Sweet, my wife hasn't left for the factory yet."

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1294

Questions were asked this morning of the witness, Mr. Smith. What can you tell us as to what your opinion is as to the obscenity of that cartoon? A. Well, to begin with, it is as corny as the hills. The only new feature about it is that the subject has been reversed. The husband is playing the part of the wife and vice versa. It has not been considered obscene for probably a hundred years and I don't see how it can be.

1295

Q. Is there an inference there which you, as a guardian of public morals, in your official capacity, feel that readers could make, and that is to say, when the milkmaid came back and when she got in the house that adultery might occur? A. If the reader is so inclined to imply that inference in what he sees, but I suppose nowadays other things could happen as well.

1296

Q. Well, it is a fact that, in your opinion as an expert, if some reader, or some members could infer ultimate adultery from that cartoon would that render it indecent, obscene, lascivious, lewd, and filthy? A. Well, I might say that all sensible and reasonable men know that there are a certain amount of individuals who inhabit society who are essentially low in character and who view obscenity in everything that they see. I repeat again that it has a good deal to do with the subject. A test that is applied by the Society in a case of this kind is will it harm the most people? In this particular instance the average man can see that and probably react with a humorous guffaw, but other than that, if you want to infer obscenity or indecency, you can do it with almost anything.

Q. While I am on that subject will you look at page 89 of the August Esquire and give us your opinion with regard to the "Paste Your Face Here" picture appearing thereon? A. The subject is no different from that that anyone might

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view at any beach resort that he may visit during the summer months. It is something that I have seen and I think 90 percent of the average men who have gone to beach resorts have seen. I fail to see that there is anything obscene or that there is any lewdness or anything like that in connection with that at all there.

1297

Q. Now I want to call your attention to this fact, read the words "Paste Your Face Here." A. Yes, sir.

Q. Doesn't that connote a nasty implication, paste your face down on the woman's stomach, and not looking out?

A. Well, of course if one is possessed with a degenerate, moronic mind, I suppose so, but to the average individual who is normal, why, I can't conceive that that is the reaction to that particular subject.

1298

Q. Would it ever occur to you as a censor of the literary morals in New England that there was any danger that any reader of Esquire would draw that filthy inference from that picture or those words? A. I repeat that there are some who belong in a world by themselves and who are ultimately a danger to all society, who would infer that of any similar picture, but I do say that to the average person who views that sort of thing, it is not different from going into one of the small picture places in a beach resort and having your picture taken on the back of a donkey, or some such thing that they use in the studio.

1299

Q. Would it ever occur to you in your work to ban that picture because it might suggest something indecent? A. If it had occurred to me I would have it banned. As a matter of fact, I remember distinctly having seen that particular publication.

Mr. Bromley: There is no longer any question of identification, Mr. Hassell, of these magazines? They are all in evidence.

*Louis J. Croteau—for Respondent—Direct.*

1300

Mr. Hassell: Subject to my general objection.

Mr. Bromley: That is with respect to their materiality. Let the library witness go.

*By Mr. Bromley:*

1301

Q. Now do you find anything in the Sultan cartoons, in which the feature of the sale or borrowing or giving of concubines or slave girls is used in juxtaposition to some American custom or phrase, which, in your opinion, makes those cartoons obscene, indecent, lascivious, lewd, and filthy? A. I do not. I think that the Sultan picture series have run over a period of years. They always imply the humorous side that is to be taken from the particular subjects represented. There is nothing obscene about that in my opinion.

Chairman Myers: Mr. Bromley, is that a good place for you now to call a recess?

Mr. Bromley: Yes, Your Honor.

Chairman Myers: Or would you prefer to go ahead?

Mr. Bromley: No.

Chairman Myers: We will take a recess until three o'clock.

1302

(Whereupon, a short recess was had.)

Chairman Myers: Are you ready to proceed, Mr. Bromley?

Mr. Bromley: Yes. Will you mark for identification Time for January 18, 1943?

(The document referred to was marked Respondent's Exhibit No. 15, for identification.)



*Louis J. Croteau—for Respondent—Direct.*

*By Mr. Bromley:*

1303

Q. Do you recall, Mr. Croteau, the two Eskey comic strips which have been complained of in some of the Esquire magazines? A. Yes, sir, I do.

Q. Now I show you an article in Time, Respondent's Exhibit 15, for identification, and ask you whether that is a typical description of comic strips as they appear from time to time in the press.

Mr. Hassell: What page is that?

Mr. Bromley: Particularly at page 75.

The Witness: Yes, sir; it is, and beyond that it is extremely prevalent today in your comic type of magazines of which there are over a hundred published.

1304

*By Mr. Bromley:*

Q. Would you also say that was a typical example of a reproduction of the Army type of jokes? A. Yes, sir, it is a very fair reproduction.

Q. Is there anything obscene or indecent about that, in your opinion? A. There is not.

Mr. Bromley: I would like to read this to the Board, if I may, under the heading of "Army's Terry."

1305

"Milton Caniff is a youngish (34) comic strip artist whose 'Terry and the Pirates' is popular (twenty-three million subscribing readers in some 110 civilian papers) partly because it is filled with lusciously sculptured ladies who move sensuously against a background of Oriental intrigue.

"In the early autumn Artist Caniff started drawing in spare time a special once-a-week super-luscious

*Louis J. Croteau—for Respondent—Direct.*

1306

'Terry' for Army newspapers. Said Artist Caniff 'I beamed it to the Army, in Army lingo. The boys like it sharp and lusty.'

"Unlike the civilian 'Terry', the Army's version has had no continuity; each week's strip has been built around a separate gag and decorated with damsels as breasty and near-nude as Caniff dared draw them. One strip had Caniff's famed shapely Burma entertaining Yanks at a dinner at which food was hauled in by slave girls apparently unclad from the waist up. As bulge-eyed soldiers stared entranced, Burma asked, 'Why don't you guys eat? Is something too spicy?'"

1307

"In another soldiers staged a camp show, used cantaloupe to give feminine allure to their flat chests. In the last panel a tough Yank spotted well-built Burma and yells, 'Hey, you! Hurry it up. I gotta get all them melons back to the mess hall!'"

Further, in connection with the picture comic strip complained of, I ask that there be marked for identification the issue of Time for October 18, 1943.

(The document referred to was marked Respondent's Exhibit No. 16, for identification.)

1308

Q. Will you look at the comic strip at the top of page 31 of the issue of October 18 from Time, and tell me whether that fairly represents what is commonly reproduced in reputable magazines today? A. Yes, sir, it is a fair and accurate representation.

Q. I call your attention to page 38—

Chairman Myers: I don't believe Mr. Hassell saw the one prior to that.

*Louis J. Croteau—for Respondent—Direct.*

Mr. Hassell: Counsel did not furnish me with his magnifying glass, but I saw it.

1309

Mr. Bromley: Here is a reproduced comic strip entitled "Lady Jane", which shows naked girls taking a bath, and some of the titles are:

"Come in, Jane! It's a real treat for me to escape from ceremony like this!"

And the other girl says:

"Yes—some of your old Cornucopian customs are rather embarrassing, Clotilde."

And the man is peeking around the screen at the girls in the bath and he says:

1310

"The Queen must be having a bath! It's my—ah—duty to—ahem—officiate."

And he leans against the screen and it falls down and the girl says:

"Good Heavens, it's the Lord Chamberlain! He's fainted!!!"

It explains what this is:

"The pin-up girl who warms the hearts of British soldiers from Italy to India is Gloucestershire Artist W. Norman Pett's pert, blonde, leggy Jane (see above). Jane is British but she is not staid. Like U. S. comic strip characters, she is constantly in and out of love, in and out of trouble. Unlike her American cousins, she is also often out of her clothes.

1311

"When Jane couldn't appear (because she'd lost her panties), admirers wrote complaining letters, sent real panties to London's "Daily Mirror" for her. Thousands of letters, telegrams, radiograms (from His Majesty's ships at sea) protested loudly last week at her recent threat to marry. Since British servicemen's morale purportedly rises and falls in direct ratio to

*Louis J. Croteau—for Respondent—Cross.*

1312

the number of times she undresses. Sir Walter Scott might have dedicated his 'A weary lot is thine, fair maid' to Jane. Puzzled Creator Pett now asks, 'If Jane has to be naked to insure a minor victory, what shall I have to do with her when we approach Berlin?' "

Now, Mr. Croteau, is there anything in any of the issues which you see before—

Chairman Myers: Is it your intention to introduce those last two in evidence?

1313

Mr. Bromley: I will offer in evidence both of the exhibits which have been marked for identification.

Chairman Myers: They are admitted in evidence subject to conditions previously stated.

(The documents above referred to were thereupon marked Respondent's Exhibits 15 and 16, respectively, and were received in evidence.)

*By Mr. Bromley:*

1314

Q. I withdraw the last question and ask this: Is there anything in any of the complained of material in any of the eleven issues, which, in your opinion, is obscene, lascivious, lewd, filthy or indecent? A. In my opinion, there is not.

Mr. Bromley: That is all.

*Cross Examination by Mr. Hassell:*

Q. Mr. Croteau, is it one of the functions of the Society to appear as a defense witness in cases where concerns of individuals are charged with violating either local, state, or federal obscenity statutes? A. It all depends on the

*Louis J. Croteau—for Respondent—Cross.*

matter at hand. I mean, they have in the past appeared and then again have not.

1315

Q. They have appeared as defense witnesses? A. Yes, sir; they have.

Q. Have you so appeared? A. Yes, sir, I have.

Q. And you appeared at the direction of your governing body of the Society? A. That is correct, sir.

Q. In what cases have you appeared as defense witness where obscenity and lewdness and filth was involved, in behalf of the defense? A. I can't recall the exact cases. I do know there were several in Boston where there was some disagreement on the part of the prosecution and the respondent as to the matter under observation by the courts in which we are asked to appear and render an informal opinion. That is exactly what I am doing here. I am not pro nor con for this. I am calling it as I see it.

1316

Q. You call these statements you have made here an informal opinion? A. Yes, sir, they are.

Q. Who called you in the local prosecutions to testify in behalf of the defense? A. In this particular case?

Q. No, I mean in the local prosecutions of violations of obscenity statutes. A. Counsel for the respondents.

Q. Counsel for the respondents? A. Yes, sir.

Q. And in how many of such cases have you appeared? A. I think three or four, if I remember correctly.

1317

Q. Over what period of time? A. Probably since 1936, or thereabouts.

Q. Since 1936? A. I should say so.

Q. When did you appear in the last one? A. I think it was some time last April.

Q. April, 1943? A. I believe so.

Q. Do you recall the nature of that prosecution? A. Yes, sir. It was a case where some magazines had been com-

*Louis J. Croteau—for Respondent—Cross.*

1318

plained of in a drugstore, I believe on Essex Street in Boston. They were purchased by the police and the police brought a complaint against the seller of the magazines and they engaged the former district attorney of Suffolk County as counsel, and he asked me to come to his office and render an informal opinion.

I did that and did not agree with the report of the police and I so testified.

Q. You don't recall the name of the defendant? A. I do not.

1319

Q. You don't recall whether or not he was convicted? A. He was not convicted, sir.

Q. Why do you recall that so definitely if you don't recall the name? A. The name of the drug store was Woodward's. I don't recall the name of the individual. I do recall he was merely the clerk who had sold the magazines.

Q. Does the local prosecuting attorney in Boston consult you before he brings a prosecution for violation of local obscenity statutes? A. I think he has in one or two instances. Ordinarily, he does not.

Q. He doesn't ordinarily do that? A. He does not.

1320

Q. And the other instances in which you testified, did the defendant win? A. If I recall correctly, there were three or four cases and I do know that two defendants were let off and one was found guilty.

Q. One was found guilty in a case in which you testified in his behalf? A. Not necessarily in his behalf—with an open mind.

Q. You appeared as a defense witness, did you not, sir? A. I was summoned by the defense, yes.

Q. I see. Does the publication Esquire have any arrangement with your organization for the review of its issues or its publication? A. No, sir; it has not.



*Louis J. Croteau—for Respondent—Cross.*

Q. Do you know whether there is any member of your organization that is in any way connected with Esquire? A. To my knowledge, no, sir.

1321

Q. Have you ever heard whether there was one? A. No, sir, I never did.

Q. You couldn't testify positively that there is not a member of your organization who is associated with Esquire? A. I say, to my knowledge I do not know of any.

Q. You don't know whether one of them might hold some stock in the organization? A. No, sir, I do not.

Q. How did you come to come down here and testify in this case? A. The Boston counsel of the respondent, Mr. Welch, called me on the telephone—

1322

Q. Mr. who— A. The Boston counsel for the respondent, Mr. Welch, called me on the phone—

Q. Who is Mr. Welch? A. I believe he is the representative in Boston for Esquire.

Q. Oh, I see. And he did what? A. He told me there was a hearing to be held in Washington on the mailability of the magazine Esquire, and requested that I come to Washington to offer testimony in behalf of Esquire.

I told him I was not at liberty to do so unless I had the approval of my Board of Directors, which met on October 14, I believe.

1323

I asked him first to submit his request in writing, which he did, and at the next directors' meeting I took the matter up with the members of the Board and they instructed me it would be all right, inasmuch as the Watch and Ward Society received such a black-eye for knocking everything down, that it would be an opportunity, possibly, for once to show we were not so narrow-minded as most people thought we were.

Q. Who is paying you? A. The Boston counsel has agreed to reimburse the Society for my expenses and time.

*Louis J. Croteau—for Respondent—Cross.*

- 1324 Q. And that includes your salary? A. Yes.  
 Q. What is that, sir? A. My salary is \$4,500 a year.  
 Q. How long have you been engaged on this case? A. On this case, sir?  
 Q. Yes. A. Since Tuesday.  
 Q. This last Tuesday? A. Yes, I came down Monday night on the train.  
 Q. You were not engaged on it prior to that time? A. No, sir.  
 Q. You had not examined these particular issues with this case in view? A. I had examined eight of the issues here in question, as a matter of office policy.
- 1325 Q. I see. With this case in view? A. Not with this case in view, no, sir.  
 Q. Did you know what the charges were here? A. No, I did not, sir, not until Tuesday morning.  
 Q. Is it the policy of the organization to oppose other law enforcement organizations and agencies in their attempts to enforce either local, state or federal statutes against filth and obscenity? A. Ordinarily not, but there is always the exception to the rule.  
 Q. And this is the exception? A. I would say so, yes, sir.
- 1326 Q. Mr. Croteau, you testified, I believe, that your organization cooperates with the Federal postal officials? A. Yes, sir.  
 Q. Just who are they? A. In Boston I think it is Tennyson Jefferson who is now the inspector in charge of violations, and he is the man with whom I do business when I have any to do.  
 You must bear in mind that there are not only magazines, but also the sale of a lot of indecent books, which are solicited through the mails, but about which I don't

*Louis J. Croteau—for Respondent—Cross.*

have to tell you, and time after time complainants will come to the office and show you a letter of solicitation for some particular book. 1327

There is one on the desk now.

Ordinarily we make a preliminary investigation to find if the complaint is justified, and then we pass it on to the authority in question, in cases of this type the Postal authorities in Boston.

Q. By "cooperating" you mean you make complaints from time to time against concerns and individuals alleged to have used the mails in connection with the transmission of obscenity? A. That, and also help the Department in obtaining tangible evidence that will stand up in a court of law. 1328

Q. You mean to say the Post Office inspectors delegate to you the authority of securing evidence? A. They do not. They merely seek my cooperation.

Q. Just how? A. Very often Mr. Tennyson will say: "Did you bring down the envelope in which the solicitation was received," or "Did you order a copy of the book complained of," or "Have you that book with you?"

Very often, if the thing is obviously wrong, we don't bother to even order the book. Sometimes he has requested "Will you get me a copy of the book to show it has been mailed to you or to an individual in your organization, and I will proceed from there." 1329

That is usually the routine.

Q. That is what you mean by assisting in the investigation? A. Not assisting, but cooperating.

Q. Cooperating? A. Yes, sir.

Q. That is the way most complainants, or a good many complainants cooperate with law enforcement agents, isn't it? A. Generally, yes, sir.

*Louis J. Croteau—for Respondent—Cross.*

1330

**Q.** Has your organization written to the Postmaster General commending him for his action against the second-class privileges of publications on account of the obscenity contents? **A.** Yes, sir; I believe several months ago such a publication was sent to Mr. Walker.

**Q.** Such a publication? **A.** Such a letter of commendation.

**Q.** And you are here in this proceeding to withdraw that letter now? **A.** Not by a long shot, no, sir.

1331

**Mr. Hassell:** May I have a couple of minutes, please, sir?

**Chairman Myers:** We will recess for five minutes.

(Whereupon, a brief recess was taken.)

**Chairman Myers:** Proceed, gentlemen.

*By Mr. Hassell:*

**Q.** Mr. Croteau, I show you a letter on the letterhead of the New England Watch and Ward Society, dated May 21, 1943, purporting to be signed by Charles H. Fleming and Louis J. Croteau, Secretary.

Is that your signature? **A.** Yes, sir.

1332

**Q.** Did you send this letter? **A.** Yes.

**Mr. Hassell:** I offer this in evidence as the next Government exhibit.

**Chairman Myers:** If there is no objection, it may be received.

**Mr. Bromley:** No objection.

(The document above referred to was marked Department's Exhibit No. 25 and was received in evidence.)

*Louis J. Croteau—for Respondent—Cross.*

Mr. Hassell: This letter of May 24, 1943, is addressed to Postmaster General, United States, Washington, D. C. It reads:

1333

"Dear Sir:

"We of the New England Watch and Ward Society wish to express to you our appreciation for the recent action that you have taken in further removing from the mails certain additional magazines and other printed matter which you deem unfit to go out to the public.

"We, as an organization, are endeavoring to prevent such pernicious literature from reaching the homes of our New England families."

1334

It is signed by Charles H. Fleming, president, and Louis J. Croteau, executive secretary.

Chairman Myers: You will probably want to submit a copy of that and keep the original in the file. Mr. Hassell, will you not?

Mr. Hassell: Possibly.

Chairman Myers: We had probably better understand each other. You may put a copy in instead of the original letter.

Mr. Bromley: I agree.

1335

Mr. Hassell: I don't know that it will be required because of the great mass of that kind of stuff in the files already.

Chairman Myers: All right, however you feel about it.

*By Mr. Hassell:*

Q. I show you another letter, Mr. Croteau, on the letterhead of the New England Watch and Ward Society, dated

*Louis J. Croteau—for Respondent—Cross.*

1336 . October 5, 1942, purporting to be signed Charles H. Fleming, president.

Do you know Mr. Fleming's signature? A. Yes, sir. I do.

Q. Is that his signature? A. Yes, sir, it is.

Q. Do you know that that letter was actually sent? A. I know that a letter was sent at or about that time.

Mr. Hassell: All right. I offer this letter.

Chairman Myers: It may be received in evidence.

1337 (The document above referred to was marked Department's Exhibit No. 26 and was received in evidence.)

Mr. Hassell: This letter reads:

"October 5, 1942.

"Postmaster General,  
United States of America,  
Washington, D. C.

Dear Sir:

1338 In behalf of the New England Watch and Ward Society. I wish to extend grateful thanks to you for your activity in curtailing the circulation of obscene literature. This is a matter which has given us great concern and difficulty and we feel that your action has cleared it up for the benefit of those readers of current literature.

"Yours very respectfully,

"Charles H. Fleming,  
"President."



*Louis J. Croteau—for Respondent—Cross.*

*By Mr. Hassell:*

1339

Q. Do you know, Mr. Croteau, whether in passing upon the question of your testifying here, the board—is that what you call the governing body of your organization? A. Yes, sir.

Q. Had in mind these letters of commendation for the action the Postmaster General has taken? A. I am not in a position to know that, sir. As a member of the board of directors, I may say that there are two on the board who dissented about my coming to Washington. The others were in favor.

Q. Two dissented? A. Yes, sir.

1340

Q. Who dissented? A. Doctor Vandersall, who is a doctor of divinity, and a Mr. Woodfin.

Q. What is his position? A. He is an executive in the civilian defense set-up in the city of Boston.

Q. What is his position? Is he a lawyer? What is his business? A. No, sir; he is a layman. He is our most recent addition to the board of directors.

Q. Your organization is a private organization, is it not? A. Yes, it is, sir.

Q. How is it maintained? A. Over the 65 years of its existence it has accumulated in bequests that have been left to the Society a sum of money amounting to \$215,000 which is invested in stocks and bonds, and the income from those bonds and stocks is used for the perpetuation of the work. Beyond that there are now nearly 400 active members in the Society, who give anywhere from one dollar to five thousand dollars. That is money that is being used to defray expenses.

1341

Q. Do the by-laws of your organization restrict its activities in that the organization is to discourage the dis-

*Louis J. Croteau—for Respondent—Cross.*

1342 semination of obscene literature? A. No, sir; the object as stated in the by-laws is to promote good public morals and to eradicate corrupt agencies. That is as stated in the by-laws.

Q. How does your testimony here further that object?  
A. Well, I believe that my testimony here is in the sense of fair play. I am frank to admit that I was a little bit at a loss as to why I am here, and I openly state that I have personally as an officer of the organization and as a director been a little bit curious as to the motive behind this entire proceeding.

1343 Q. You mean the motive of the officials of the Post Office Department? A. Yes, sir. It seemed a little bit out of the ordinary in view of the fact that Esquire had not been complained of to the Society at any time.

I might say at this time that in Boston where our office is and throughout New England the organization is considered as a sort of watch dog, and if there is anything radically wrong in the field of criminal violations, ordinarily there is some rumble along the line. We get some complaints, and in the police department, for instance, if it is brought out that in several precincts there are some commanding officers who are so-called businessmen, we will know about it, and I was a little bit at a loss to understand why it was that the Postal authorities proceeded to institute proceedings against this magazine when we apparently were in the dark about the whole situation.

1344 I don't mean that we set ourselves up to interfere with Government agencies or to find out every action that the Government takes on any case, but there was something about this that was not quite clear in the minds of some of the directors and in my own mind.

*Louis J. Croteau—for Respondent—Cross.*

Q. Do you have any question in your mind about the action taken in other cases of this sort? The right of the publications to enjoy a subsidy and to go out under the stamp of approval of the Post Office Department, being such publications designed for the dissemination of information of a public character, devoted to the sciences, the arts, and some special industry? A. Well, there are many other publications, Mr. Hassell, which are far more offensive, that is in my opinion, than *Esquire*, that it seemed a little bit of an off tackle play to touch upon this publication and not tackle other publications which were far worse.

1345

Q. Do you know the names of the publications whose second-class privileges have been revoked by the Department?

1346

A. I don't know if they have second-class privileges. I do know there was a large batch that we were informed were banned, but by name I wouldn't know them. No one supplied me with a list of them.

Q. You don't know the names of those publications, yet you are comparing the action taken in those cases with the action in this case? A. No, I am not comparing the action taken in those cases. I am comparing the action which could be taken in many cases which as yet has not come about.

Q. Do you realize in your contact with law-enforcement officers that you can't proceed against every one at one and the same time? A. I respectfully concede that, Mr. Hassell.

1347

Q. But still you say that you question the motives of the officials of the Post Office Department who called upon this publication to show cause why a second-class privilege should not be revoked, and you are not familiar with the action taken against other publications? A. No, sir, I am not familiar with them.

*Louis J. Croteau—for Respondent—Cross.*

1348 Q. In other words, you are here in the capacity of attempting to rescue a high-class, decent publication which you think ought not to be imposed upon by the unscrupulous Federal authorities. Is that your position? A. No, that is not my position. I am here for the purpose of listening to the pros and cons of this argument and appearing here with an open mind. I have for a long time felt that *Esquire* was probably one of the representative periodicals of our American way of life. I have never at any time seen anything wrong with it; that is, that could be construed as obscene, indecent, lascivious, or lewd, call it what you will.

1349 I say that it is on a good many family tables, on many tables throughout New England and perhaps elsewhere in the country, and why this action was taken, I don't know. I am in the dark about it and that is what I had hoped to be able to find out.

Q. Well, when you took the witness stand, you were here for the first time, were you not? A. No, Mr. Hassell, I was here for about five minutes, I think, when you made your opening remarks, up to the point where you asked that the witnesses be excused.

1350 Q. Would you agree with statements of other witnesses if such statements had been made or are hereafter made that *Esquire* has the reputation for being risque and hush-hush? A. I will grant you the first part of your question, but not the last part of it because I don't know what you mean by "hush".

Q. That is something that the ordinary decent citizen does not like to have found on his living room table. A. Well, I don't quite concur in that because I think it enjoys a very large circulation and is representative of the average American home.

*Louis J. Croteau—for Respondent—Cross.*

Q. You think it is representative of the average American home? A. I believe so. It is in our communities, at least. I can't speak for the rest of the country. 1351

Q. You want all your testimony respecting Esquire considered and weighed in the light of that statement, do you?

Mr. Bromley: I submit that that is not a fair question. I object to it as incompetent.

Chairman Myers: Well, I think it is a sort of test question on the part of the cross examiner and one that he has a right to ask.

Objection overruled.

The Witness: I respectfully concede, Mr. Hassell, that there have been instances in Esquire that have been racy, a little border-line, probably, and to use your word, risqué. I do say that it is done in the spirit of good, clean slap-stick humor, and I do believe we could all use a little more of it right now. God knows, there is enough gloom going on throughout the world that if anybody can't be creative enough to give us more relief, such as the soldier and the sailor and the factory worker, relief that will take us away from the hub-hub of every day life. 1352

*By Mr. Hassell:*

Q. Is it your position, in fact, Mr. Croteau, that Government, federal, local and state law enforcement officials with regard to obscene, lewd, indecent and filthy material should turn over their functions to your organization? A. Not by a long shot. I do say to you that there are some instances where there is a complete break-down in law enforcement: particularly in small communities, sometimes due to graft. 1353



*Louis J. Croteau—for Respondent—Cross.*

1354

and corruption and sometimes due to political inefficiency and sometimes due to things like that. That is the reason I say that the Watch and Ward Society exists, not to usurp the authority of any constituted local or state or federal agency.

Q. Burlesques similar to those you saw are conducted in theaters in Boston? A. Yes, sir, at three theaters in Boston.

Q. Are those burlesque shows banned in some cities? A. Yes, there are some, Worcester and Springfield that I know of.

1355

Q. At the behest of your society? A. No, sir; at the behest of the local authorities.

Q. Are they banned in New York City? A. I don't believe so. They have been at times.

Q. The burlesque houses on 42nd Street have opened up again, have they? A. So I understand.

Q. Which one—since when was that? A. I believe since last spring.

Q. I believe you testified that as part of your official duties you read the script of plays to be produced in theaters in Boston. A. Not all of them. Those about which there was some question are submitted to the office by the city censor.

1356

Q. Have you read books and magazines in any number? A. Oh, yes.

Q. About how many books and magazines would you say you have read? A. Roughly, I think about seven or eight hundred a year. We cover about 120 or 125 different publications, but there are several copies, of course, the issues that come to my attention.

Q. 125 different issues? A. Yes, sir.

Q. In a month? A. Not a month, over the year.

Q. Over the year? A. Yes, sir.



*Louis J. Croteau—for Respondent—Cross.*

Q. How many books over the year? A. Books, probably don't amount to over 80 or 100. 1357

Q. How many books do you read a week? A. Well, about two.

Q. About two full-length novels? A. No, I don't read them in their full content. The way in which a book is examined is that it is presented to the office and through the entire context of the book are marked the marginal lines opposite the part of that which should be brought to my attention. If there is any question at all, no matter how negligible it may seem to the assistant, the marginal line is made, and the result is that when I pick up the book, then I know what to read. There is a notation that is made on the jacket of the book as to the pages on which the marked lines appear, and I go back and read the part which has been brought to my attention. 1358

Q. You only read the excerpts? A. Yes.

Q. You follow that same procedure with respect to the magazines? A. I do, Mr. Hassell, yes.

Q. Do you read anything else outside of books and magazines? A. No, I don't. Pictorial issues. There are several pictorial issues that come out and on which the picture or jacket has in the same way been marked as to the literary material or the picture. The Police Gazette is one that invariably receives first and special attention. 1359

Q. Who makes the preliminary examination under you? A. The office assistants make the preliminary examination and mark the book. I am the one that renders the opinion on the preliminary examination.

Q. Who is the office assistant, just what person? A. Just one.

Q. Male or female? A. Female.

Q. How old? A. She is about 30 years of age, a married woman.

*Louis J. Croteau—for Respondent—Cross.*

1360

Q. How old are you, sir? A. I am 48, sir.

Q. By reason of these duties that you have described, do you think that you are an expert on what is obscene, lewd, lascivious, indecent and filthy? A. What I think doesn't matter very much. It is the respect that I enjoy from local court authorities and law enforcement officers. In their opinion, I am considered an expert. I am very humble to say that sometimes I am a little bit doubtful as to my ability.

1361

Q. The fact that you are dealing with obscenity and filth all the time does not have a tendency to have you grow calloused to it and pass up things that certain persons who are not so engaged would possibly not pass up? A. There have been times when that particular thing did bother me and when it does happen I usually check with a committee. If there is anything doubtful in my own mind, I usually point it out to someone else and try to get a cross section of opinion. I don't say that I am the only fellow that knows it, and I contend that I am not a censor as was stated in your opening remarks. There is no such animal as a censor. In the final analysis the censorship lies with a body that finds and convicts.

1362

Q. But in answer to counsel's question on direct you said that this organization is the outstanding censorship organization in this country or perhaps in the world. A. It is so recognized, Mr. Hassell, not on my say-so, but on the say-so of many public authorities.

Q. But the organization is a censorship organization; it has that standing, hasn't it? A. It has had that standing for many years, a number of years.

Q. But you are not a censor? A. I contend that there is no living human being who can tell any mature person what he should or should not read. I think that you can

*Louis J. Croteau—for Respondent—Cross.*

and should create a censor in so far as pre-adolescents are concerned, and probably adolescents, and sometimes in these modern days I wonder if that should not be stricken out, but I always contend that there isn't a human being that should tell anyone, any mature person, what he should or should not read. What is objectionable and offensive to you may be entirely all right with me, and vice versa.

Q. So you agree with the statement that I have made that obscenity is a function of many variables? A. Yes. It is a multiple number of facts all taken together and by which a committee, or a number of men, or a governing board apply a certain amount of common reason and sense to the policy as to arriving at what is and what is not obscene. Perhaps you know better than I do that years ago we had a Watch and Ward Society which had a set and fast rule. A thing was either bad or it was good. There was no half-way medium. There was no elasticity to it and, as a result, our Massachusetts' statute on literature was changed by the book dealers themselves, and the ultimate result was, as you told us some time here this afternoon, that the book or the magazine or the periodical in question must be taken as a whole and not an abstract or a sentence or paragraph.

In years past the Watch and Ward Society could walk into a complaint justice and say, "Now here is a paragraph that says so and so. In our opinion it is obscene. We want a complaint placed against the book or magazine." Now, as a result of that, that does not apply today in any New England court. The statute was changed and the book was considered as a whole. I might say that I tried to bring a complaint against four books in the last year which, in my opinion, were obscene, and the courts themselves deemed that they could not be considered obscene because the book as a whole was not obscene.

*Louis J. Croteau—for Respondent—Cross.*

1366 Q. Are you finished? A. Yes.

Mr. Hassell: Now, Mr. Reporter, will you read my question?

(Question read.)

*By Mr. Hassell:*

1367 Q. Now, Mr. Croteau, would you also agree that in a determination of whether or not a particular thing is obscene, lewd, lascivious, or indecent, or filthy, is in and of itself a small piece of legislation? A. I will concede that, Mr. Hassell, yes, sir.

Q. So, if that is the fact, will you also concede the testimony of a so-called expert on the question of what is or what is not obscenity, lewdness, lasciviousness, indecency, or filth is of no value? A. Not having heard the testimony, I can't say.

Q. I am saying any testimony by such an alleged expert. A. Well, I'm afraid that I don't agree with you on that, Mr. Hassell.

Q. You agree that the determination is somewhat similar to a legislative act? A. Yes, sir, I do.

1368 Q. Now, your volunteer statement there, you got into this hard and fast rule which you mention. What was the hard and fast rule by which a thing was taken to be obscene or indecent? A. The hard and fast rule was that if a periodical contained a slight amount of obscenity or a large amount, it made no difference, just so long as it contained obscenity. Whether or not the entire book was obscene, or whether or not it contained only a single paragraph of obscenity, was the hard and fast rule that was applied.

*Louis J. Croteau—for Respondent—Cross.*

Q. Now a book or a magazine may contain bits of obscenity or filth and your organization does not regard it as objectionable? A. The organization has tried to keep itself attuned to the modern times and the present day standards and mores as applied to life.

1369

Mr. Hassell: Will you read my question, please?

(Question read.)

*By Mr. Hassell:*

Q. Now, will you answer that question? A. That is correct.

1370

Q. Does your organization regard as obscene or objectionable nudist books with front views of male and female figures shown in the front picture? A. It does regard nudity in any periodical as obscene.

Q. There you might have one such picture in a book and the whole book, the balance of the book is entirely unobjectionable and would be an argument for nudism, stating why it is of benefit to society for various reasons. No objection at all. You have one nude picture there and the book would be objectionable, is that right? A. Yes, sir, it would.

Q. Well, how does that jibe with your statement of this hard and fast rule that you changed in 1930— A. 1934.

1371

Q. 1934? A. There I would say that a certain amount of reason and common sense must be used. I don't think that you can take, for instance, the Bible and slap a pornographic picture on the front page of it and say "Now, here, this is all right." I think you are going to extremes now.

Q. You think that is extreme in view of your prior testimony? A. No, I don't, but in view of your remark that



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1372

a book could contain entirely unobjectionable material and yet have a front jacket, or picture, in it that was obscene.

Q. No, I didn't say obscene. I said a nude picture of a nudist book. A. If it has the two subjects, it is obscene.

Q. If it has the nude picture? A. Of the male and female together, it is considered obscene.

Q. You differentiate between those having male and female pictures in one pose and those having the sexes separated in poses? A. Yes, sir.

1373

Q. If you have the female sex on one page in one picture and the male sex on the other page in another picture then that is all right, is it? A. No, it is not, because it is in the contents of the book.

Q. It is in the what? A. The context of the book.

Q. What portion of your day, the working day, day in and day out, week in and week out, year in and year out, do you spend reading questionable magazines, books, theatricals, scripts, and so forth? A. I usually get into my office at 8:30 in the morning, and I usually devote the first half hour to my correspondence and mail. From there on I devote my time to reading magazines, books, theatrical strips, and so on, up to two o'clock in the afternoon. I thereupon enjoy a little lunch, and I work until six or six-thirty in the evening. That goes on for six days a week, and I stay home Sunday.

1374

Q. So you live pretty much the whole day every day in the year with this sort of filth and indecent and obscene material? A. That is right, sir.

Q. As part of your duties, do you read the Saturday Evening Post? A. The agents are out in the field and invariably throughout their contacts and on their investigations they pick up various parts of magazines. That comes along in the particular place they are at. I don't have to



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tell you that if a bookie room is operating in the back of a newsstand he doesn't walk in there and deliberately walk into the back room. He usually spends some time and reads a magazine. There are some that are earmarked and some are not. If he brings back a Saturday Evening Post it was not because it was earmarked, but because it was present. Those are placed on the office assistant's desk and she looks them over, and if there is anything in them she marks it for my attention. If she finds nothing in them she throws them in the wastebasket.

1375

Q. So you read all magazines whether they are questionable or not, is that right? A. No, I don't read all the magazines. As a matter of fact, I don't think there is any living human being that could and exist very long.

1376

Q. In how many instances have you found objectionable material or obscenity, I mean, in the Saturday Evening Post? A. No obscenity. I have found material that was racy, risque, probably humorous to the nth degree.

Q. Have you found any words or material such as has been adverted to here and as appears in Esquire? A. I don't believe in the Saturday Evening Post, no, sir. Perhaps, if there was, I don't recall it now.

Q. Why did you make a reexamination of the eleven issues of Esquire involved in this case after you came here? A. I was requested to, sir.

1377

Q. You were requested to by counsel? A. Yes, sir, I was.

Q. Well, what was his request to you? A. I believe his opening question was "Have you examined these eleven issues?" and if my memory serves me correctly my reply was to the effect that I had probably examined 80 percent of them. I believe the conversation went on something like this: "Do you want to refresh your memory and look over those that you did not?" And I agreed to do so.

*Louis J. Croteau—for Respondent—Cross.*

1378

Q. Did counsel call your attention to the fact that there were features that ran through this magazine like the Sultan cartoons and the Esquire comic strip and so forth? A. No, sir, but counsel did not—I infer from what you say that I got coaching on this thing. I was not coached in any way. I was left to break this thing down in my own way.

Q. I wouldn't intimate that counsel would coach you.

Mr. Bromley: Thank you. Thank you.

*By Mr. Hassell:*

1379

Q. Now, Mr. Croteau, will you take the January issue of Esquire and refer to page 6, the material boxed in that page under "Shor Nuff." A. Yes, sir.

Q. Will you agree that the writer there in the first paragraph of Esquire says this, and do you agree with him: "Esquire, the four-bit magazine which is always busy as a little beaver sandwiching good advice between its spicy cartoons." Do you agree with that? A. Yes, sir, I do.

Q. As a description of Esquire? A. Yes, sir, it is spicy.

Q. Spicy in that it deals with sex? A. Not necessarily. It is humorous.

1380

Q. Do you recall any humor aside from the sex in these things? A. Well, I think that humor depends a good deal entirely upon the individual himself, the people, as I told you some time ago, that the individual who reads a magazine can imply what he wants to what he is reading. No one has any control over his mind and if he wants to feel dirty-minded about it, why, that is his own business.

Q. Now, look down the last paragraph of the first column. A. Yes, sir.

Q. In the third sentence which reads: "Comes it then breeding (no, not that) which scores 50."

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Q. What do you take that reference to refer to? A. I don't find that, Mr. Hassell.

1381

Q. In the first column of the "Shor Nuff" article, the last paragraph, third sentence in that paragraph: "Comes it then breeding (no, not that) which scores 50." A. Yes, sir.

Q. What do you take that to refer to? What does that convey to your mind, what activity does that convey to your mind? A. Well, it could mean a number of things. It could infer a generalization on the entire article; it could infer probably the thoughts of the one man.

Q. The what? A. It could infer a generalization on the entire article.

1382

Q. I heard that. What was the last statement? A. "Comes it then breeding (no, not that) which scores 50."

Q. "No, not that," is the way it reads, isn't it? A. That is correct, sir.

Q. What is the purpose of putting that in there? A. I think the intent is to be humorous.

Q. On what subject? A. The entire subject at hand. If the individual wants to infer anything sexy about it, he is at liberty to do so.

Q. Would you say that that parenthetical phrase is put in there to refer to the reproduction of the species? A. I should not say so, no, Mr. Hassell.

1383

Q. Now, look at the first complete paragraph on the second column at the top. "The pay-off on what kind of a guy this Woodhead is comes quick. He figures a gal's dancing ability is worth 20 points. Sex he gives 10. So he'd rather dance—". A. Yes, sir.

Q. What do you gather the meaning of that to be? A. The meaning is very obvious. The girl is by far, by 10 percent, a better dancer than she is a sexy person. That is.

*Louis J. Croteau—for Respondent—Cross.*

1384

she is a far better person to bring about the desire to dance than she is to bring about the impulse of sex.

Q. You don't think it refers to the completely dead status of Woodhead, do you, in so far as sex is concerned and women are concerned? A. Well, that is difficult to say, Mr. Hasseli. There again you would have a multiple number of facts upon which you must apply a various number of reasons for what you are thinking.

Q. But you would get no such idea from this part I have read here? A. No, sir, I would not.

1385

Q. What education have you had, sir? A. I am an academic graduate of a preparatory school.

Q. What school is that? A. St. Regis Academy in Berlin, New Hampshire.

Q. That is equal to a high school diploma? A. Plus two years, yes, sir.

Q. Now, at the bottom of this article, the second column, is:

"7. Juking—a. That's right. Just what you're thinking about . . . 400 points." A. Yes, sir.

1386

Q. What do you think that statement is desired to conjure up in the minds of the readers? A. Juking is a form of entertainment, dancing, kidding around, playing—it has been applied to many such things. I don't think the inference of sex is there.

Q. If so, why the comment or whatever you want to call it following the word "juking"? It says, "a". That's right. "Just what you're thinking about."—A. I don't see that, sir.

Q. That follows the word "juking." A. There again, what is the individual thinking? There are any number of things that you could apply to it. It depends on the individual reading it.

Q. I say, why do the words appear there? Are they mean-

*Louis J. Crôteau—for Respondent—Cross.*

ingless to you? A. They are for the individual interpretation. They could mean almost nothing or anything to the individual reading them. 1387

Q. But they don't mean anything to you? A. They don't mean sex, if that's what you mean.

Q. I see.

Now, refer to page 45, the first four lines of the first verse of the printing appearing on that page under the title "Benedicts Awake!" It reads: 1388

"Men sleeping beside your wives, Awake!  
Awake to gaze longingly, lastingly  
Upon soft skinned thigh and softer breast  
Revealed by careless gown,"

and the first two lines in the last paragraph:

"Men sleeping beside your wives, Awake!  
Awake and seek the sweet caress of lip and arm."

A. Yes, sir.

Q. Do you say that that language does not contain or convey to your mind any thought of indecency? A. Not by a long shot.

Q. Any thought of indelicacy in referring to a subject that is not ordinarily discussed about the way a man may view the charms of his wife while in bed with her? A. I don't see anything indelicate about any man admiring his wife's charms. I am married and I see nothing indelicate about my admiring my wife, particularly in this instance. 1389

It is obvious here that the lines that were intended to make the most damage in your question were read, but if you read the entire article I think it is laudable.

*Louis J. Croteau—for Respondent—Cross.*

1390 I personally am going to go in the service in a few weeks and when I first read this I was much impressed with it, and I think any man who will read it seriously will admire it, but if you are going to linger over it and try to find filth and dirt in every word you read through an implication of enunciation, you are bound to find it.

Q. Would you be influenced in your views when you consider the type of magazine in which this matter appears?

A. The only thing that would change my mind about the type of magazine, is that the magazine was distributed among adolescents. I am afraid then I would probably object to it.

1391 On the other hand, I am frank to admit this particular magazine was on my living room table for a long time, and I have a boy 18 and a girl 16 and a girl 13, and I know they all read it and I raised no objection to it.

Q. But you think it might be objectionable among adolescents generally? A. Yes, if brought into the school room and displayed generally under the peek-a-boo type of desk. It would cause harm, probably.

Q. I see. Now, let's go to page 83, "Those Star and Garter Blues" article by Gilbert Seldes. Did you see the play or show "Star and Garter Blues"? A. I did in New York, sir.

1392 Q. It doesn't play in Boston? A. No, sir, it does not.

Q. You went down to New York to see it or happened to see it while you were there? A. I happened to go there while I was there on other business.

Q. And you went there for entertainment? A. I didn't go there for entertainment.

Q. To see the show? A. I went for the purpose of seeing what "Star and Garter" was like. It is part of my business.

Q. You were not taking a bus man's holiday, so-called, when you went to see "Star and Garter Blues"? A. No.



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I did know at the time that "Star and Garter" was not going to be permitted to play in Boston and for my own satisfaction I wanted to know why and I went to see the show.

1393

Q. Who decided that? A. The city censor.

Q. Do you have such an office in Boston? A. Yes, sir, it is part of the mayor's office.

Q. Is that his official title? A. He is considered the Boston city censor, in charge of the Boston licensing division. He is the fellow who gives out the licenses and suspends or revokes them if they do not live up to the rules of the city ordinances.

Q. After you saw this show, did you agree it should not be shown in Boston? A. I did not.

1394

Q. You thought it was perfectly all right that it should be shown there? A. I did not. There were some parts that were racy, and those parts were called to the attention of the production manager and he was told if he would eliminate them he could show in Boston.

Q. Let's see. Those things that were thought to be racy—look at the center part of the complete paragraph in the center column of this page 83, which reads:

"In this particular show there is also a young slender dancer named Leticia, who does a wonderful trick ballet dance—a trick because it is actually erotic."

1395

Do you recall that dance in the show? A. Yes, I do, Mr. Hassell.

Q. And going ahead with the reading:

"Where so many of the hip grinds are not."

Do you agree with Gilbert Seldes in describing that trick ballet as actually erotic? A. Yes, sir; it is erotic.

Q. Now, going from where I left off reading:

"There is also a character from the night clubs who makes her breasts jiggle, and this is considered funny, but I didn't

*Louis J. Croteau—<sup>2</sup>for Respondent—Cross.*

1396 think so, even at the night clubs where her frankness was greater, her skill no more engaging."

Did you consider that erotic? A. It was not erotic; it was objectionable from my standpoint.

Q. And then going ahead:

"A stripper who does an orgiastic dance verges on the erotic."

Do you recall that? A. Yes, I believe I do.

Q. Do you recall a stripper in that show by the name of Georgia Sothern? A. I do.

1397 Q. Who does a "bump" with practically nothing on? A. Yes, sir, a big heavy red head.

Q. And you believe that is who Seldes refers to in that line? A. Yes, I think so.

Q. Do you think that dance was erotic? A. As presented there, yes. As Georgia Sothern performed in Boston, no.

Q. So this article is, is it not, a statement, a review or an advertisement of an erotic show? A. I think it is the report on the show "Star and Garter," by a man who has handled a very indelicate situation in an extremely delicate manner.

1398 I am frank to say if I viewed it and was asked to write a report on it, I don't think I could do as well, and many of my agents who reviewed the burlesque performances in Boston could get a good lesson by reading this, because if they were allowed to reproduce their reports in print, I think probably we might all go to jail.

Q. Do you think any reader of "Esquire" might be induced to go and spend his \$4.40 to see this show by reason of having read this article by Gilbert Seldes here? A. I don't think so. I think a man attends a burlesque show because he has purely fundamental reasons for doing so. He may be seeking entertainment or trying to kill an idle

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hour, but I don't think this article would entice him to go see something that is reported here. 1399

Q. Suppose you take a reader of "Esquire" who never heard of this show and he reads this article and finds that here is a show going on in the city of New York that has several erotic dances in it, so described in the magazine that he purchases or subscribes to. And later he is in New York.

• Do you think he might, being interested in that sort of stuff, be induced to go there by reason of this? A. If the man is susceptible to that kind of entertainment, yes.

Q. Now, Mr. Croteau, don't you know that the average virile active man is susceptible to that sort of entertainment? 1400

A. I don't agree with you on that, Mr. Hassell.

Q. You don't agree with that? A. No, sir.

Q. You don't agree that the average uninhibited male is enticed by a thing of this sort? A. Out of curiosity, yes, I concede you that, but I don't think because he has any sexy motives behind it.

It is a common thing for all the Harvard students to want to go to The Old Howard but it is because they are curious and not because they have sex on their minds.

Q. Now, referring, Mr. Croteau, on page 98, to the so-called Varga girl calendar, note the way in which what purports or appears to be a magazine entitled "Dreamland" is part way draped over the hip and buttock of this figure. A. Yes, sir. 1401

Q. Noting also the scarcity of the covering and its apparent transparency. Would you say there is nothing indecent or objectionable about that picture? A. Considering the modern standards and mores of the times, I would say not.

To begin with, the Varga girl is not an actual reproduc-

*Louis J. Croteau—for Respondent—Cross.*

1402

tion. It is a composite picture made up by the artist's mind and does not represent any individual.

Q. By the way, Mr. Croteau, was the moving picture "Du Barry was a Lady" shown in Boston? A. Yes, sir, it was.

Q. Did you see it? A. I saw it, I think, the first two reels of the picture. I was not able to see it all.

Q. Did you see the Varga girl alleged reproductions in that picture? A. No, sir; I did not.

Q. You would not be able to state that they were clothed for the arctic, as one might say, as compared with these?

1403

A. Not having seen it, I couldn't say; no, sir.

Q. Now, refer to the next picture on page 101, May. That picture in connection with the verse:

"May's a balmy sort of month  
That makes me apprehensive,  
A lot of fellows get the urge  
To start their spring offensive!"

Look on this model's face, her extremely scanty attire, her seemingly recumbent pose, and would you say there is nothing indecent about that picture? A. No, sir, it is not indecent.

1404

Q. Take the June picture on page 102. All of the clothing on this model appears to be the flowers in her hair and a scanty grass or willow girdle around her middle. Do you say there is nothing indecent or sexy, sexually enticing in that picture and the pose? A. No, sir. It is a fair representation of the modern standards. You see it every day on your burlesque stages and probably in legitimate plays.

Q. You see every day on the burlesque stages a woman without anything about her breast and with such a garment as this woman has on? A. In this particular case the

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breast is not exposed, it is covered by flowers and that is the same trick they employ at the burlesque houses.

1405

Q. The flowers are not attached to the body, are they?  
A. And they are not in the burlesque houses either. They are held in such manner as to cover the breast. They sometimes use pigeons to do the same thing.

Q. If this model's breasts were exposed, do you think that would be objectionable? A. If the breasts were exposed, yes. It would not be allowed on the burlesque stages in New England, at least.

Q. I am talking about a magazine in Boston. Would the society take objection to it? A. It would take exception to it, I don't know that it would take legal action, but it would take exception to it.

1406

Q. On page 103 the figure for July, and the verse:

"July's a patriotic month  
And you will all agree  
Whoever dreamed this suit up  
Took a lot of liberty!"

Does that indicate or refer in your mind to the extremely scanty state of her attire? A. Not to my mind. It might in some individual's mind. I have seen worse on the beaches.

Q. Without a brassiere? A. Lying on the sand, face and breast down in the sand, just as she is here.

1407

Q. Now, the next one, page 104, August. This model is in a recumbent pose, isn't she? A. Depending upon from which angle you look at it. I can state she is in a recumbent position.

Q. Now, the costume, if it may be called such, which is painted on this model, reveals everything underneath it, doesn't it? A. Well, it reveals in substance the contour of her body—not in detail.

*Louis J. Croteau—for Respondent—Cross.*

1408 Q. Doesn't it accentuate? A. It doesn't accentuate the umbilicus and it does not accentuate the nipples of the breasts.

Q. Doesn't it accentuate the nipples of her breasts? A. Not necessarily so. Again, I say it is not a true model. I think they have been created that way.

Q. Why do you think they would be created that way? A. Because it is the artist's idea of what the Varga girl should look like. I don't think there is any sexy intent behind it.

Q. Now, the verse on this says:

1409

"I find a cool, secluded beach,  
A perfect August shelter,  
But all the men who pass my way  
Just look at me . . . and swelter."

A. It is a normal thing to swelter in the summer time. Isn't it?

Q. But they look at her and swelter. A. There again you have the individual's inference. If you want to take that slant a person is at liberty to do so.

1410 Q. What other slant can you take? Isn't that what it says? A. I think it is reasonable to say that nine out of ten men can read this, read just what it says and not stumble on the exclamations or the words, and not get any cockeyed ideas about it.

Q. You think nine out of ten men would read that verse and not get an idea that it was intended— A. To be smutty.

Q. —to indicate that the person looking at that would have an increasing rise of blood pressure by reason of the instilling of sexual desires? A. I do not, Mr. Hassell, no, sir.



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Q. And you think the sweltering part only refers to the weather in August? A. That would be my natural reaction to it. I can only speak for myself.

1411

Q. Do they swelter on the beaches in Boston in August?  
A. In Massachusetts, yes.

Q. I thought the water was awfully cold up there. A. They are on the beach, not in the water.

Q. Look at the picture on page 15, September, and the verse. This model is in a recumbent pose with the right leg cocked up, isn't she? A. Yes, sir.

Q. The verse reads:

"September brings us cooler days  
But still I have to pose on,  
Oh, Mr. Varga, hurry up  
And let me put some clothes on!"

1412

Do you think that verse is intended to imply that she has no clothes on to speak of? A. No, I don't agree with you, Mr. Hassell, I think it is the lament of what a model might say if she were actually a true living person. This is just a creation in the artist's mind.

Q. Would you say the costumes or one piece garment she has on is transparent or translucent? A. No, it is neither transparent nor translucent, nor diaphanous.

1413

Q. You can see at points the color of her flesh through this, cannot you? A. No, I don't agree with you, Mr. Hassell.

Q. How about in the middle of the figure? A. The contours are high-lighted. I wouldn't describe that as the umbilicus. It is a high-lighted indentation in the color plate.

Q. I am speaking of the dark shading in the pubic region.  
A. That is purely in the plate itself. I don't think that is

*Louis J. Croteau—for Respondent—Cross.*

1414 intended to be obscene, whatsoever. I might add that I have seen worse in newspapers.

Q. You mean in life-like colors such as this? A. No, sir, in black and white.

Q. Now, wouldn't you agree, Mr. Croteau, there is quite a difference between running a picture in black and white and between life-like colors? A. If you are going to infer sex, I don't think it makes any difference. I think if a person is bent on finding sex in a picture, the color in which it appears makes no difference.

1415 Q. Whether or not a person is bent on sex, don't you think the natural color is a more pleasing reproduction than one in black and white? A. I concede you that, sir, but this is not a natural reproduction.

Q. But it is an approach to the natural flesh color, isn't it? A. From the artist's standpoint, yes.

Q. It is an attempt to reach that. Now, refer to page 106, October. A. Yes, sir.

Q. The verse:

"October is a lovely month  
Of yellows and of reds.  
The leaves start turning golden  
And I start turning heads!"

1416

What sort of a costume would you describe this model as having, Mr. Croteau? A. It is a diaphanous garment that covers the breast, torso, and part of the buttocks and the pubic region of the subject.

It is commonly used today in all theatrical productions and is referred to as a leotard.

Q. Do you notice the point of the right breast showing through the material? A. I don't think that is exaggerated.

*Louis J. Croteau—for Respondent—Cross.*

in any sense. I think I have seen that particular reaction of the female breast, even on actual persons.

1417

Q. But you notice that point, don't you? A. Yes, sir; I do.

Q. Would you say that is a bathing costume? A. No, I grant you it is not a bathing costume. I don't think it is intended to be a bathing costume, Mr. Hassell.

Q. You would not think that is a diving board she is lying on? A. I shouldn't think so, no, sir.

Q. Now, look at the November figure at page 107 and verse:

1418

"November's swell for hunting—

But this year it seems flat!

The only men worth hunting for  
Are hunting for a rat!"

A. I think that is humorous.

Q. You think this picture is humorous when coupled with the verse? A. No, not the picture; I think the verse is humorous.

Q. Do you think the picture shows the model in a hunting costume? A. Well, if I am to base my observation on what again I see in burlesque houses—this must become pretty irksome—yes, it is.

1419

Q. It is a hunting costume? A. It is what is considered a theatrical costume.

Q. A theatrical costume? A. Yes, and used extensively throughout the country today by theatrical people.

Q. A costume that has nothing supporting it at the breasts and is cut clear down past the middle in the back?

A. I have seen far less on Georgia Sothorn and if you have seen her, you did.

*Louis J. Croteau—for Respondent—Cross.*

1420 Q. You say there is nothing in any of these pictures that might be considered as indecent, lewd, lascivious? A. If there is I fail to find it, Mr. Hassell.

Q. Now, refer to page 123, "Ad Libbing with Esquire" up under the top of the fourth column of that page, "Dear Doctor Diddle". A. Yes, sir.

Q. I believe you defined the word "diddle". Where did you find that definition of it? A. If my memory serves me correctly, in a Webster's dictionary. I think the definition of it is "borrow, steal, or to fool away time."

Q. How recently have you looked that up? A. As late as yesterday. So—

1421 Q. I see. So you expected to be asked about the meaning of that and you came prepared for it? A. Not necessarily. I was a little bit puzzled about it and when speaking about it I gave my opinion of what "diddle" was, and I was told that what I was defining was "doodle".

You and I and everyone does it whenever we are in a telephone booth, make pictures on the wall. It is a common expression used every day in the theatrical profession—"Go flub your diddle". That is a common expression on the stage.

1422 Q. Is this word "diddle", meaning frittering away your time, commonly used in New England? A. Yes. I repeat, it is commonly used on the boards of the theaters up there.

Q. But you had to refresh your recollection on its meaning by looking it up in Webster, did you? A. Yes, sir, that is correct.

Q. Now, page 137, the air raid wardens apparently on the roof of the building, seated by a skylight, one of them is rather wide-eyedly or bug-eyedly, looking into the skylight and he has his fingers in his mouth, and the legend underneath: "And to think I gave up drawing."

*Louis J. Croteau—for Respondent—Cross.*

I would like, first, Respondent's Exhibit, the copy of the New Yorker of August 7, 1943, that was introduced in connection with this cartoon—

1423

Mr. Bromley: Here it is. (handing document to counsel.)

Mr. Hassell: This is Exhibit 2. Is there an Exhibit 1?

Mr. Bromley: Yes. (Document handed to counsel.)

*By Mr. Hassell:*

1424

Q. Mr. Croteau, I believe you testified in connection with this cartoon that this is on a par or similar to pictures or cartoons appearing in Respondent's Exhibits 1 and 2, one purporting to show men and women drawing from life in a life class studio, and number two showing a window washer on the outside of a window of the building, apparently looking in a studio window, and drawing the back of what appears to be a nude model on the side of the building.

Do you recall those two in New Yorker? A. Yes, sir.

Q. Do you say that these are similar to the cartoon in Esquire and have substantially the same import, or are they worse? A. What I did say, Mr. Hassell, and probably what the connotation inferred, if it should be so taken, was that apparently what this subject's mind was on was what was being reproduced inside the studio. In this one there is a skylight and the models, and he is probably censuring himself for having given up drawing.

1425

It is a very plausible thing.

Q. Yes. You think the black and white sketched drawings in the New Yorker are more objectionable from a spicy

*Louis J. Croteau—for Respondent—Cross.*

1426

standpoint than the cartoon using one color plus black and white, appearing at page 137 of Esquire? A. Well, I do say if you are comparing the two pictures, here are two men on a roof top, in a very innocent pose, sitting on a box with a telescope by their side, and here you have the original model and five easels representing the nude woman, one of the artists, purportedly a woman.

1427

Q. Now, this cartoon in Esquire, January issue, page 137, does that indicate that those two men are peeking, or one is peeking and the other has been peeking through the skylight at a scene not intended for his or their eyes? A. I think the inference is, that he has been peeking at just such a scene as this, or similar.

Q. Well, would the fact that they were peeking make the Esquire cartoon more risque than the ones in the New Yorker? A. I shouldn't think so, no.

Q. You think it is all right for men to peek at nude women whom they are not supposed to see? A. I don't think it is any worse for an individual to be sitting on a roof top and looking through a skylight, than it is for an artist to sit in a studio and paint a nude woman, a nude model. Substantially they are one and the same thing.

1428

Q. You believe an artist sitting in a studio, following his business, vocation or avocation, painting from a nude model, as shown in those cartoons there, with a front view of the model being simply pen outlines of the figure, would be just as objectionable or more objectionable than this scene depicted in this cartoon on page 137 of January Esquire? A. I don't think the peeking thing in this particular scene is the highlight or the inference. Here is a man who stops to think, "I gave up drawing." Apparently he is lamenting with himself because he seems to be an artist or a draftsman or something like that. Of course, if you want to imply dirt in it, why, it is very possible.



*Louis J. Croteau—for Respondent—Cross.*

Q. Appearing in a risqué magazine such as Esquire, would it be natural to imply that inference? A. I can say that it is intended to be humorous. 1429

Q. In that way? A. In that way, yes, sir.

Q. I see, sir. A. But not offensive.

Chairman Myers: Is this a convenient place for us to adjourn?

Mr. Hassell: That winds up the January issue.

Chairman Myers: If that is so, we will adjourn until 9:30 tomorrow morning.

(Whereupon, at 5:00 o'clock, p. m., the hearing in the above-entitled matter was adjourned until 9:30 o'clock, a. m., Saturday, October 23, 1943.) 1430

## HEARING OF OCTOBER 23, 1943.

1432

## PROCEEDINGS RESUMED.

Chairman Myers: Suppose we start, gentlemen.

LOUIS J. CROTEAU a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

1433

*Cross Examination by Mr. Hassell (Continued):*

Q. Mr. Croteau, calling your attention to Respondent's Exhibit 3, Colliers for February 6, 1943, page 30, the cartoon outlining the two rather grotesque figures under which appears: "Do you suppose, Professor, it is just because I don't understand women?"

Do you take the position, sir, that that cartoon is objectionable from an indecent standpoint, and as objectionable as the skylight air-raid warden peepers you referred to yesterday afternoon? A. Well, I would say that it is a reasonable similarity.

1434

Q. Now, will you refer to the February issue of Esquire, page 65, the Sultan cartoon, showing what appears to be an auctioneer with the girl in a scanty costume beside him, under which appears: "What I am bid for this 100 pounds of sugar?" A. Yes, sir.

Q. What is your idea as to what is intended to be conveyed by this cartoon to readers of the publication Esquire?

A. I believe that the idea that is to be conveyed is to be humorous. I mean, it is not at all unusual for Turkish customs to auction off concubines and bits of sweet females.

*Louis J. Crôteau—for Respondent—Cross.*

To refer to it as a sweet 100 pounds of sugar is simply trying to be humorous.

1435

Q. May I have the New Yorker of September 11, 1943, which is Respondent's Exhibit 4? I believe, Mr. Crôteau, the Sultan cartoon that you refer to was mentioned by counsel in connection with this Respondent's Exhibit. A. Yes, sir.

Q. What is the similarity there between that cartoon and the one in Esquire, February issue, at page 63? A. I would say that the similarity is that both have services for sale. In the Sultan cartoon the auctioneer announces the sweetness of this presumed concubine where, in this instance, apparently a prostitute is selling or soliciting on her own in the doorway of an employment agency.

1436

Q. Just read what appears in the body of the cartoon there. A. Right here, sir (indicating)?

Q. Yes; and what appears underneath. A. "Men wanted, experienced and inexperienced. Good pay". And then I can make out the words, I suppose it is, "While you earn".

Q. And there is a woman standing in the doorway? A. Yes, sir.

Q. And you read from that that instead of her selling her services, the men ought to be paid? That is your understanding or what you got from it? That is your understanding or did you get a different understanding of it? A. No, I didn't get that understanding from it, Mr. Hassell. I don't think the sign is intended. That this part "Men Wanted", I think is very significant. "Experienced and inexperienced" is significant, principally the words "Good pay". They have some bearing on it. I don't think the rest of it has.

1437

Q. Now, page 95 of the February issue. In connection with the language in "The Unsinkable Sailor" article or

*Louis J. Croteau—for Respondent—Cross.*

1438 story in the February issue of Esquire, page 95, your attention was called on direct to matter appearing in, I believe, one or two sentences on page 56 of the April 6, 1943, issue of the New Yorker, Respondent's Exhibit No. 5, as part of an article starting on page 44 of that publication, entitled "A Reporter At Large" and following with the column on page 48, a column on page 51, a column on page 52, one on page 53, one on page 54, and one on page 55, and then you get down to the end of the article on page 56 and we have four or five sentences in a space of a little over an inch on that page.

1439 Do you think that that is as bad as the material in "The Unsinkable Sailor"? A. I think that the description in that paragraph, Mr. Hassell, is far more forceful than what appears in "The Unsinkable Sailor".

In "The Unsinkable Sailor", the word "sonovabitch" appears once; and here beyond the word "son-of-a-bitch" you have profanity and the words "God damn it, guts", which also imply vulgarity.

As a matter of fact, he repeats "God damn it" twice.

1440 Q. Point out the matter in there that is comparable to the portion of this story or article appearing on page 95, fourth column, near the top: "How's chances to lower the boom on you, sister?" A. I fail to see that there is anything that compares with the sentence: "How's chances to lower the boom on you, sister?", but I repeat that yesterday I gave an explanation—

Q. You needn't repeat. Let's get along, sir.

Just one other question in connection with that "How's chances to lower the boom on you".

What portion of a man is comparable to a boom on a cargo vessel, in your mind? A. Well, comparing the meaning of the sentence: "Let's lower the boom on you, sister".

*Louis J. Croteau—for Respondent—Cross.*

or "How's chances to lower the boom," I compare it with the remark: "How's chances of putting the arm on you," which is a commonplace remark meaning: "How's chances of making a loan".

1441

Q. But, in this instance the girl jumped up in terror and ran screaming from the room. "Oh, that man! That man!," she cried, "he wants to do something terrible to me".

Do you think that leaves any ambiguity of what is intended by that sentence: "How's chances of lowering the boom on you, sister?" A. It means that the girl was absolutely misconstruing what was said and absolutely misapplying the words.

1442

Q. I believe attention was also called on direct to Respondent's Exhibit No. 6, an article appearing in the February, 1943, issue of the Cosmopolitan, in connection with the article by Edmund Gilligan entitled "The Court of Lost Ladies", at page 60 of the April, 1943, issue of Esquire.

Isn't it a fact that the Cosmopolitan article has a subtitle entitled:

"How much do you know about the alarming rise in crime among our boys and girls between the ages of 12 and 16? Why have crimes of murder and sex become commonplace? Here are the facts. They are not pretty reading, but they are true. What are you going to do about it?" The article is entitled "Our Teen Age Crime Wave".

1443

Have you read this article, sir? A. No, I have not.

Q. You have not read it? A. No, sir; I have not.

Q. So you are not able to compare that with Gilligan's article? A. No, sir.

Q. Now, in that connection, have you read the matter appearing on page 16 of the March 29, 1943, issue of Time

*Louis J. Croteau—for Respondent—Cross.*

1444

headed, "Health Among the Amateurs." Have you read that? A. Yes.

Q. You say that compares with the article of Gilligan's on the Court of Lost Ladies? A. I think the Court of Lost Ladies is a far more sincere article than that one, sir.

Q. But this article in Time is an article reporting matter developed at a House Naval Affairs Committee hearing. A. Yes, sir.

Q. Is it not? A. Yes, sir.

1445

Q. In so far as you are aware, is the Gilligan article factual or fanciful? That is, is it factual report or is it a story? A. In so far as I have been able to ascertain, and from what I know of procedure of courts, this is a factual report.

Q. The article does not purport to be a factual report, does it? A. I did not find anything in it that said so, no, sir.

1446

Q. So far as the reader might judge, this article was derived from the fancy of the writer based upon some experience possibly, but he does not name any dates, places, the name of the judge, and the names of the participants, does he? A. No, he does not, but I would not imply that the reader would imply that it was a fanciful article. I remember distinctly having read it at the time and, I did not think for one minute that it was fiction.

Q. It does not purport to be a factual report? A. No, it doesn't say so in so many words, no.

Q. Does the article point to the way in which prostitutes may escape punishment? A. I hardly think so. There is no question but what some prostitutes who come before a bar of justice know all the answers, but I don't think the article was intended to be a lesson or instruction in that vein.



*Louis J. Croteau—for Respondent—Cross.*

Q. Well, I was not asking you what you thought the article was intended to show, but I asked you if on page 61, the third column, beginning with the third paragraph and extending over near the bottom of column four on that page, it does not recite how a blonde woman disposes of the charge against her and was allowed to go scot free?

1447

A. Yes, sir.

Q. That is a fact? A. Yes, sir.

Q. Would you say that that was instructions to prostitutes as to how to comport themselves in escaping punishment? A. I doubt it very much. I doubt very much if there are many prostitutes who read Esquire.

1448

Q. What is the basis of that statement? How many prostitutes do you know, sir? A. Well, roughly, last year we arrested over 108 of them and convicted probably 26 to 27 of them.

Q. And you personally knew all of these and what they read? A. No, sir, I didn't know them personally.

Q. They didn't tell you all the things they read, did they? A. Well, I might say that in the number of places that we raided, it is customary to seize the material that is found in the establishment, and at no time ever during any of those raids did I ever see Esquire on the premises.

Q. Were you looking for Esquire at the time, Mr. Croteau? A. Not necessarily Esquire. I was looking for everything that might help us in the case.

1449

Q. Now do you recall definitely, so definitely that you are able to swear to it, that in none of those houses was there a single copy of Esquire? A. I couldn't take an oath on it, no, sir.

Q. Further than that you did not question these prostitutes on their reading habits, if any, did you? A. Knowing their general habits, I don't think they are intellectual enough, that is, the majority of them.

*Louis J. Croteau—for Respondent—Cross.*

1450 Q. Answer the question, will you please? A. No, sir. I did not.

Q. Did you read, referring to the February issue of Esquire, pages 76 and 77? A. Yes, sir.

Q. Did you read the story "Home Sweet Ruby Street"? A. Yes, sir, I did.

Q. And in that story did you note the drawing at the bottom of page 77? A. Yes, sir, I did.

Q. And the accompanying text describing the incident of the visit of Mrs. Finn to this place? A. Yes, I did. Mr. Hassell.

1451 Q. That describes her call into a sleeping room, doesn't it? A. Yes, sir, it does.

Q. In which a male and female young couple are in bed together? A. Yes, sir.

Q. And apparently the parents or two old people are also present in the room? A. Yes, sir.

Q. And while this visitor, Mrs. Finn, is there, the two young people get up and put on their clothes, dress in her presence. You recall that? A. Yes, sir.

Q. And you also recall that this appears in the article:

1452 "Thinking it better to begin afresh, she fastened her good eye severely on her notebook and presently flung at Mrs. Vermillion a new leaf, the writing on which became slightly furry as her wandering eye, cast presumably in the direction of the ceiling, caught Edna and Radiant gingerly dressing. Radiant, only half clad and suspecting the vagrant eye to be focused on him, winked slowly at Mrs. Finn."

Do you think that language, coupled with the drawing, conveys anything salacious? A. To me it conveys that there is no question but what the man and the girl were in the bed. It doesn't indicate anything beyond that. If the individual reading it wants to infer more than that I am afraid there is ample there from which he can do so.

*Louis J. Crotteau—for Respondent—Cross.*

Q. Do you think it is decent to picture by a drawing and by language, such as this, a scene of this kind? A. Well, in connection with the locale of the story, I don't think there is anything unusual about it.

1153

Q. Are you familiar with Harlem? A. Somewhat, yes, sir.

Q. And the habits of its inhabitants? A. Yes, sir.

Q. Are you familiar with scenes of this sort happening in the dwellings of the inhabitants in Harlem? A. I am not familiar with them personally, no, sir.

Q. You say it is nothing uncommon in the locale? A. It is generally conceded that the morals of certain groups of inhabitants in Harlem are low in their responsibility to society.

1454

Q. Do you think it is perfectly proper that this type of material be carried through the mails under the stamp of approval of the Post Office Department and at a substantial loss to the taxpayers? A. I do, sir.

Mr. Bromley: Mr. Chairman, may I ask Mr. Hassell whether he contends that there is an additional question here to obscenity, that is, whether we are entitled to have the stamp of approval on our publication, or entitled to a subsidy? Is that something different from obscenity?

1455

Mr. Hassell: Why, I submit the question involved here is really whether or not this publication is entitled to the second-class privilege.

Now, if it complies with all the conditions laid down by law, it is certainly entitled to the second class privilege.

The first of those conditions under Section 334 of 39 U. S. Code is that it must be mailable matter.

*Louis J. Croteau—for Respondent—Cross.*

1456

I grant that. But if it is shown that this publication over a large number, or a series of issues, continuously and as a usual thing is putting out objectionable non-mailable matter, then it certainly is not entitled to the second-class privilege.

That question was disposed of by the Supreme Court in the *Burleson-Milwaukee Leader* case. The matter there, of course, was subversive.

1457

There is a further matter in connection with this. I will cover it more fully in the argument. But we are not dealing with a criminal case here. This statute makes matter non-mailable and imposes a duty and an authority on the Postmaster General to exclude matter from the mail. His right and his duty under that portion of the statute has been accepted by the courts. This is not a criminal action.

We are not required here to establish such a degree of indecency as would convince a jury beyond a reasonable doubt.

Chairman Myers: Does that clear the matter up for you, Mr. Bromley?

1458

Mr. Bromley: No, it only makes it more confusing. It seems to me that we are entitled to have him state whether or not it is not the fact that the only question is obscenity and not whether a magazine is entitled to a subsidy, or whether it is objectionable on some other ground. It seems to me that the only question here is whether this magazine is obscene under the criminal statute. Of course, this is not a criminal proceeding, but it seems to me the only question here is, is it obscene under the criminal statute, and if it is, then it should not be mailable. But

*Louis J. Croteau—for Respondent—Cross.*

there is no question as to whether it is objectionable to the Board, or whether it is entitled to a subsidy or not. 1459

If it is obscene then it should not be mailable. If it is not obscene then it should be given the second-class privilege.

Mr. Hassell: I don't see how the Board can escape considering the matter in this magazine in the light of the issue, and the sole issue involved here is as to whether this magazine is entitled to a subsidized postal rate and to the approval of the Post Office Department under the 4th condition of the second-class Act. Of course, we go back of the mailability on account of the matter that we are calling attention to here. 1460

Chairman Myers: There is no question pending. Mr. Bromley simply wanted to have cleared up in his mind the issue that was before the Board.

It strikes me that the issue here raised is whether or not this matter is obscene. It implies, of course, the question that Mr. Hassell has raised, whether or not to be obscene it must be sufficient to support criminal action. There has been a great deal of discussion about that, but it has always been a question in my mind as to whether the line was not drawn at the jail door. 1461

*By Mr. Hassell:*

Q. Now, referring to the material on page 9 of the March 1943 issue of Esquire. This is, you will note, an advertisement of Thorne Smith's books which is headed "Thorne Smith's Three Wittiest, Most Ribald Novels Now In This Big Brand New Volume."

*Louis J. Croteau—for Respondent—Cross.*

1462

Now, under that is, "America's one and only Rabelaisian humorist!" A. Yes, sir.

Q. Have you read that advertisement and noted the illustrations therein? A. Yes, sir, I have.

Q. Would you say that that advertisement is so worded as to leave the reader to believe that if he purchased this book, or these books, he will get something obscene, lewd, indecent, or rotten? A. No, sir, I wouldn't.

1463

Q. Now I refer you to matter appearing on page 10 of that issue under the "Sound And The Fury," and the reproduced letter signed "Somewhere, Indiana, D. S." and the heading of it is, "On putting Esky in a cap and gown." Have you read that? A. Yes, sir, I have.

Q. I call your attention to the parenthetical matter appearing in the first column of this reproduced letter. A. Yes, sir.

Q. I ask you to note that matter:

"You probably envision a bald-headed gentleman gazing at Varga vistas of forbidden fruit, but as a matter of fact, I'm quite young and that's not my dilemma." A. Yes, sir.

Q. That is in the first part of that. Do you have the same view as expressed here with reference to the Varga girl pictures? A. No, sir, I do not.

1464

Q. Why do you think Esquire would publish and advertise to its readers this view of the Varga girls as forbidden fruit? A. As I understand it, it is a letter that was received by the editor and is reproduced and it reproduces hundreds of letters which are received by the editor of Esquire.

Q. But why would that letter be reproduced? Why would they select this letter out of many hundreds and thousands of letters? A. I don't know that they selected it.

Q. Well, they certainly did if they published it here and did not publish a great many others that they received.



*Louis J. Croteau—for Respondent—Cross.*

A. I don't know that they have any set method of selection. Probably they pick them out at random.

1465

Q. Now, further on down in the last paragraph, past the center of the last paragraph, it says:

"The only way in which this could be done, without disturbing small-town codes of conduct, would be to semi-camouflage that bulge-eyed masher on the front of each issue and make it appear like the front of, let us say, Harper's or the Atlantic."

Do you agree with the characterization of Esky on the front covers as "that bulge-eyed masher"? A. Well, he is a bulge-eyed creature. I don't know that you would refer to him as a masher.

1466

Q. What is a masher? A. A masher ordinarily is a man who is concerned with annoying women.

Q. He tries to pick up women for immoral purposes, is that it? A. I won't concede immoral purposes, but he does annoy them.

Q. Women who are strangers to him? A. Yes, sir.

Q. Now, referring to page 49 of this March issue. Another one of the so-called Sultan cartoons. Now this shows two soldiers and what appears to be a scantily clad slave girl to whose leg is attached a card reading "Happy Birthday." And underneath is the sub-title, "I wonder how the sultan knew this was my birthday."

1467

What do you think a soldier in this sort of setting could do with a slave girl sent to him as a birthday present? A. Well, he could do any number of things. She could be used for mild entertainment, she could be used for other types of entertainment, she could be construed as being sent there purely for the curiosity of it, or anything else.

Q. You don't think it is fair to infer from this cartoon in this issue of this man's magazine that anything indecent

*Louis J. Croteau—for Respondent—Cross.*

1468

or indecent relations were implied? A. Not unless the individual wants to imply it himself.

Q. And you don't want to imply that? A. No, I fail to see that there is anything but humor in it, Mr. Hassell.

Q. Where is the humor? A. There are two soldiers apparently of the French Legion in the middle of the desert, who probably very seldom see women of any kind, and one, in an effort to be facetious, turns to the other and says "Look at what the sultan sent me for my birthday".

I don't think it implies anything beyond that.

1469

Q. Now, on page 68 of the March, 1943, issue, of Esquire, in the center column of this article: "The Fall of the Flattering Word", there is a statement:

"Rarely on the justifiable ground that these clothes will reveal and conceal so craftily that men will be driven mad with desire." A. Yes, sir.

Q. Do you agree that women may wear clothes that will accomplish that? A. I believe so. I think that in the Gay '90s that is just exactly what did happen.

Q. You say in the Gay '90s the clothes revealed portions of the ladies' anatomy? A. I believe that the trend in that period was the abundance of clothes that a woman wore which created a desire on a man's part to investigate the anatomy.

1470

Q. So the less a woman wears, the less attractive she becomes. Is that your belief? A. Yes, sir. I believe that is so. It is proven in our nudist colonies.

Q. So if the Varga girl pictures had nothing resembling clothing on them, they would be less attractive than they are now? A. I believe so, yes, Mr. Hassell.

Q. That is, from a sexual standpoint. So the absolutely nude form would be less objectionable and less indecent than a woman clothed as in the Gay '90s? A. The true

*Louis J. Croteau—for Respondent—Cross.*

test of that is your strip tease features, which receive less attention and less applause from the male audience than do your chorus girls, who wear considerably more clothing.

1471

Q. But it is a fact that burlesque shows are still making use of strip teasers, isn't it? A. I think the better production managers have come to the conclusion that they are just excess baggage, where three or four years ago there were four strip tease artists featured in any production, they were decreased to two, and sometimes to one.

Q. Referring to the \$1.40 burlesque show, "Star and Garter". How many strip teasers do they have there? A. If I recall correctly, four.

1472

Q. Referring further to the article: "The Fall of the Flattering Word", on page 68:

"When we approach the young of the species, the innocents at college, we are a little franker. A 'show-off V-neck' or a 'skirt pleated for action' (on a bicycle, so be quiet) are at least 'functional'".

What is the purport of the matter in parentheses in conjunction with the other matter in this portion I have read? A. I think the writer is trying to convey today that we are more frank about our expressions about our attire than we were probably a quarter of a century ago.

1473

Q. Referring to the words: "Skirt pleated for action (on a bicycle, so be quiet)", what do you think that conveys?

A. I think the idea is to dismay anybody who may have any dirty thoughts about it, sir.

Q. But isn't the prospect of a dirty thought made inescapable by the parenthetical matter "on a bicycle, so be quiet"? A. There again, it depends upon the individual reading and the interpretation he places upon it.

*Louis J. Croteau—for Respondent—Cross.*

1474

Q. You wouldn't place any such interpretation on it, would you? A. No, sir, I would not.

Q. Now, referring to page 107 of this issue. Here we have the hill-billy cartoon showing a woman nursing a baby and another one beside her chair on the floor bawling, apparently, and the statement underneath: "Seems like somebody's allers clamorin' to somebody to open up a second front, don't it?"

1475

Is it common in Boston or in the area in which you operate, for women to nurse their children in public? A. In regard to that, I might say that sometime in the past six months I had occasion to make a visit to Lewiston, Maine, and coming back a woman was nursing a set of twins on a day coach. No one paid any attention to it. I think it is a normal function.

Q. Is that a common occurrence through New England? A. Not a common occurrence, Mr. Hassell, no.

Q. Referring to the April issue, Mr. Croteau, of Esquire. Would you say that the breasts of the female figures on this cover page, front cover, are over-emphasized? A. To begin with they are not females. They are caricatures modeled out of clay.

1476

Q. They are not meant to represent females? A. Naturally, they represent females, but it is obvious to anybody with reasonable sense that it is not a female figure.

Q. But would you say the breasts of these figures are overly emphasized? A. I think both the—as a matter of fact, the head, the shoulders and the breasts are over-emphasized.

Q. Now, refer to the verse printed in connection with the Varga girl picture at page 38 of this issue. Have you read that verse headed: "Peace, It's Wonderful!"? A. Yes, sir, I have.

*Louis J. Croteau—for Respondent—Cross.*

Q. The latter part of it:

1477

"And then leads her to the altar on the run—  
She will let him slumber heavily  
Where once he woke to reveille  
And never bawl him out about his lapse:  
But, unless my eyes deceive me,  
He won't be so lax, believe me,  
When the clock upon the mantle points to 'taps'!"

Do you say that is not an indecent connotation, Mr. Croteau? A. In my opinion, it is not.

Q. What does that refer to? A. Well, it is a soldier boy who is coming back after slapping down the Axis, and it is clear he is apparently going to run his fiancée to the altar and get married, and it goes on to say that she will never bawl him out about his lapse if he oversleeps in the morning.

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The only thing that it infers, and it is quite proper, is that he won't have any objections about going to bed at night. There is nothing objectionable about going to bed with your wife.

Q. "Unless my eyes deceive me," refers to this Varga girl picture in a brief, somewhat military, private first class Army uniform. A. Well, I think if you find any fault with the uniform at all it is just downright silly.

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Q. I see. You don't find any fault with the figure, either? A. No, sir. It is not a true figure, but from an artist's standpoint I think it is well done.

Q. The uniform or dress is cut down rather low in front, isn't it? A. Yes, sir, but I have seen a lot less on women.

Q. And it is so sheer that you can see the umbilicus, can't you? You can see where it is? A. That is the impression of where it is.

*Louis J. Croteau—for Respondent—Cross.*

1480

Q. Just below the belt buckle? A. Yes, sir.

Q. At the line:

"But, unless my eyes deceive me,  
He won't be so lax, believe me";

refers to the Varga girl picture and such use he is to make of her, doesn't it? A. No, I don't tie in the two at all. I mean I consider the verse as entirely separate from the picture. It has no connection with it.

1481

Q. Now, referring to the May issue of Esquire. You are a sort of expert on burlesque, aren't you, Mr. Croteau? A. I have been told that I am, yes, sir.

Q. How many shows do you attend a week? A. Probably six or eight.

Q. Six or eight a week? A. Yes, sir. Beyond that, I think I take in probably at least two floor shows at night clubs every night of the week; that is, six nights a week.

Q. Don't you often find yourself going to sleep at some of these shows by reason of having seen the same sort of show over and over again? A. No, not actually going to sleep, but I find it irksome.

Q. You find it very tiring? A. Yes, sir.

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Q. In other words, you are surfeited with burlesque, aren't you? A. Yes, sir; probably I am.

Q. So the article on page 32 of this May issue: "The Savage Beast In Us. Dispelling the hopes of burlesque entrepreneurs and fears of censors that the strip has sensory appeal", by Paul Gallico, is, to use the language of the street, "right up your alley", isn't it? A. Yes, sir; it is.

Q. Any sort of digs that any sort of writer could throw at burlesque would please you very much, wouldn't it? A. Not necessarily, no, sir.



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Q. You are tired of it, you would like to see it stopped?

A. No, sir. I do believe in a sense of fair play and I do believe the producers of burlesque have an investment and they are entitled to have it protected.

Q. But, I believe you described the "grind" and the "bump" which you stated are well illustrated by the pictures on pages 32 and 33 of this article? A. Yes, sir.

Q. As being not at all in good taste? A. No feature of the strip tease is in good taste, Mr. Hassell.

Q. Well, will you answer my question? A. Yes, sir; I do.

Q. As being not at all in good taste? A. Yes, sir; I do.

Q. Now, you think, on the other hand, that these illustrations in connection with this article which you say correctly portrays those things not at all in good taste, is in good taste? A. No, I think that these caricatures here are not in good taste, but they are not obscene, and as I understand it, the charge here is obscenity.

Q. In your opinion, pictures which are designed to show and which you say do show the grind and the bump and the strip tease are not indecent in a magazine of this sort? A. No, sir; I do not.

Q. Do you think the average reader of Esquire would get the same reaction from this article that you, an expert on burlesque, would get from it, Mr. Croteau? A. I think it is reasonable to assume that a good percentage of them would.

Q. Do you know any other patron of burlesque who goes to see burlesque shows six or eight times a week? A. No, and if he does I don't think he is quite normal, if it is not part of his job.

Q. Now, referring to page 48. This is another one of the air raid watchers cartoons. You will notice the figure with the binoculars is looking down from the top of this building, which appears to be in a congested city area with buildings all around. A. Yes, sir.

*Louis J. Croteau—for Respondent—Cross.*

1486

Q. Do you gather from this picture that he is peeping through a window at night? A. I don't concede that he is peeping through a window. He may be peeping at something, not necessarily through a window.

Q. Well, you can see light coming through the buildings across the way, can't you? A. Yes, but not in the direction in which he is looking.

1487

Q. You think probably he is trying to look in a window that has no light in it at all, or in a room that has no light? A. I don't think what I think matters at all. It was the intent here. The intent here is, I think, to be humorous and funny and I think a good deal is left to the imagination of the man that looks at the picture.

Q. Well, what does your imagination tell you that he is looking at? A. He probably is looking at exactly what the cartoon says, looking at a B-17 or a P-40; a large airship or probably a stream-lined one. Probably he is looking, and the inference might be drawn by somebody that he is looking at women.

Q. Now, let us see, your first instance there. He is probably looking at an airship. A. Yes, sir.

Q. A large airship? A. Yes, sir.

1488

Q. Is it customary to find a large airship down on the ground in the midst of city buildings? A. I think you will notice in the same picture that the background indicates these lights that are illuminating the sky. It is an indication that the airfield is not far away.

Q. Let us grant that. That is the airfield, but he is not looking in the direction of the airfield at all, is he? A. That is right. But the airfield may be in this direction.

Q. Now, Mr. Croteau, from this picture you wouldn't think that that man is looking at an airfield, would you? A. No. My first inference was not that at all, Mr. Hassell.

*Louis J. Croteau—for Respondent—Cross.*

Q. Pages 86 and 87 of this May issue. This deals with the Exploits of Esky strip, a strip of cartoons running across those two pages, beginning with 29 and running through 32. Did you consider the text in connection with those cartoons?

A. Yes, sir; I did, Mr. Hassell.

Q. Starting at the bottom of the cartoon, 28, it says: "The lady dislikes men, but wants a baby, so I sold her a ticket for the time when women can become pregnant by taking an electric shock", and so forth.

The first cartoon, 29, shows Esky peeping over some bushes at what appears to be a young nude woman in water up to her waist. A. Yes, sir.

Q. Then the text brings her out of the pool and she dresses while she walks along with Esky and they go to Finneagan's Dell to view other totally naked females. A. Yes, sir.

Q. And the red head explains that that is the abode of the Libidos "where they gather when they are not on men's minds", and so forth.

You say that those cartoons and that text does not deal with anything indecent or imply any indecent thoughts? A. I respectfully submit, Mr. Hassell, that in my opinion, and after a good deal of consideration, this is probably the worst feature that I have found in Esquire so far, but I do not go so far as to concede that it is indecent. It is utterly in bad taste, I thought. I readily concede it is utterly in bad taste, both in text and in design.

Q. Well, how is it so bad, sir? Tell us that. A. Well, it is bad in that it depicts a character who habitually is always being entranced or enticed to be in the company of women and who is quite fastidious in his manners. I have never at any time seen Esky in any compromising situation, but he is always on the border-line.

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*Louis J. Croteau—for Respondent—Cross.*

1492 Q. Now, what do you think about Esky peeping over the bushes looking at these women in the nude? A. Well, I think that probably he is doing the same thing that a lot of men would do under the same circumstances.

Q. You think that is perfectly decent, do you? A. I do not. I told you that I concede that it is utterly improper.

Q. You do think it is decent, though, for a man to take a peek over bushes at a woman nude, in bathing? A. Perhaps not in all circles it is considered as indecent. I do not consider it as indecent, but improper and in very bad taste.

1493 Q. How is it improper? A. Well, it is not the thing that a gentleman would do.

Q. Oh, I see, you have certain standards for gentlemen and certain standards of decency. Well, where do you draw the line? A. I think there again that lies with the individual. There are many gentlemen who are so-called gentlemen on the surface and have all the appearances of being so, but under the right circumstances may very easily give in to their inhibitions and do the indecent thing.

Q. Now, you notice Esky's goggle eyes are focused on this nude girl in the pool? A. Yes, I do.

Q. Do you think there is anything indecent about that? A. Not indecent, but improper.

1494 Q. You notice in the next strip his goggle eye, the one visible, is pointing towards the totally nude female around behind that bush? A. Yes, sir; I do.

Q. There is nothing indecent in that? A. No, sir. It is improper.

Q. But to your mind this is the worst feature that you found in any of those issues of Esquire? A. In my opinion. Mr. Hassell, it is.

Q. Now, referring to page 93, the text described in the picture on page 92 of this issue. The text or descriptive ma-

*Louis J. Croteau—for Respondent—Cross.*

terial of "Broadway for the Boys", which has under it "The juke joint scene from the 'The Eve of St. Mark'", and the text reads: "These soldiers have just come from a discussion of a hygiene lecture in which it was estimated that in the Army 20 per cent don't, 20 per cent do, and 60 per cent might." A. Yes, sir.

Q. And then it refers to the characters and says, "Lil tells how dull it was in town before the Army moved in, but hints there can be too much of a good thing."

"'This is practically inflation, what we've got now,' she complains. One thing leads to another and another leads straight back to barracks when Quizz decides he belongs to the first 20 per cent. 'I have a hell of a hankering,' says Marion."

"'But you're the strong, solid man and you bear the purse. I bow to your judgment and follow.'"

You say there is no indecent implication to be derived from this textual material, referring to the picture on the preceding page showing the soldier seated with the girl in his lap with her arm around his neck, and they are both holding glasses indicating that they have had a part of a drink? A. I say that the text meaning is no worse than it is in the play itself. Insofar as the picture is concerned, I fail to see anything indecent about it.

Q. It is perfectly decent for a young woman to sit on the lap of a young man with her arm around his neck and her dress showing up to her knees, and a little beyond, and apparently taking a drink with him? A. I might say to that, Mr. Hassell, that I see this very thing happen probably half a dozen times each night in my working week.

Q. And that makes it proper and not indecent? A. It doesn't make it proper, but it doesn't make it indecent, either.

Q. It doesn't make it indecent? A. No, sir; it does not.

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1498

**Chairman Myers:** We will take a recess for a short time.

(Whereupon, a brief recess was taken.)

**Chairman Myers:** Proceed, gentlemen.

*By Mr. Hassell:*

**Q.** Mr. Croteau, referring to the June issue of Esquire, page 34—that is the Varga picture entitled “Something for the Boys”.

1499

This shows the two-page spread in what purports to be natural colors, and the young woman leaning back on her haunches. One hand is shown. **A.** Yes, sir.

**Q.** Would you say that costume is cut rather high and rather sparsely at the crotch? **A.** No, Mr. Hassell. I have seen a very similar costume, probably one that was cut higher, on ballet artists.

**Q.** What do you imply from the title “Something for the Boys”, in connection with this picture? **A.** It is something for the boys to look at it.

**Q.** What would they want to look at it for? **A.** Purely from the standpoint of beauty.

1500

**Q.** Do you think it is not intended to have any salacious or sex appeal for the boys? **A.** Not unless the individual wants to imply such.

**Q.** You notice the points of the breasts shown there, showing through the very sheer material with which this model purports to be clothed. **A.** It is high-lighted on the color page. I wouldn't necessarily know that it is the points of the breast.

**Q.** Do you think there is anything salacious, or indecent.



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or lascivious about this pose, coupled with the title? A. I do not, Mr. Hassell.

1501

Q. At page 134: "Libel suits were as wine to that hell-firin' editor of the old West, Dave Day." A. Yes, sir.

Q. And it sets forth several items at the bottom of column 1 extending through the middle of column 2. A. Yes, sir.

Q. Have you read those items? A. Yes, sir; I have.

Q. Both purporting to be social items on the first page of the publication referred to. A. That is correct.

Q. The first one:

"Two weddings are on dit for next week. This weather kind of suggests two in a bed, spoon fashion." A. Yes, sir.

1502

Q. What idea do you get from the statement "Two in a bed, spoon fashion"? A. I would probably think it was compared in those times as the counterpart of bundling, which was very common in New England in its early days.

Q. You mean wedded people would bundle? A. No, in courtship, due to the lack of fuel, the fiancée would bundle in the bed.

Q. You get the idea of bundling from this line "Two weddings are on dit for next week. This weather kind of suggests two in a bed, spoon fashion." A. As applied at that time, yes, sir.

1503

Q. And two in a bed, spoon fashion, what posture would that indicate to you? A. I imagine they would be very proximate to one another and probably have their sides very close in a bundled fashion.

Q. They would be about as close together as they could get, wouldn't they? A. I should imagine so. They did that when bundling.

Q. But you admit that wedded people, married people, don't bundle, or didn't bundle? A. There wasn't any neces-

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1504

sity for bundling with married people. They could go to bed conventionally.

Q. And this deals with wedded people or married people, doesn't it? A. Yes, sir.

Q. The one underneath that, an epitaph:

"Here lies the body of poor old Charlotte.  
Born a virgin, died a harlot.  
For 18 years she kept her virginity.  
An all-time record in this vicinity."

A. Yes, sir.

1505

Q. Is there anything indecent about that? A. It is in bad taste; it is as corny as Paul Revere.

Q. It is in bad taste, but you say it is not indecent? A. No, sir; it is not indecent.

Q. And you would say the preceding item that we have just referred to about the two in bed is not indecent? A. Not indecent, no, Mr. Hassell.

Q. Take the third item:

"In future, all communications to the Muldoon will be marked with an asterisk to show that the editor disclaims responsibility. Each correspondent will have his own a-s-t-e-r-i-s-k." A. Yes, sir.

1506

Q. Now—

Mr. Hassell: Thanks to counsel for showing me that.

Mr. Bromley: Stop rubbing it in, will you?

*By Mr. Hassell:*

Q. Do you understand what that means, the use of the simple asterisk at the end of the sentence? A. Your pro-

*Louis J. Croteau—for Respondent—Cross.*

nunciation on it, Mr. Hassell, makes it very understandable.

1507

Q. Would you read that from the item? A. "Or: In future, all communications to the Muldoon will be marked with an asterisk to show that the editor disclaims responsibility. Each correspondent will have his own \*."

Q. You say there is nothing indecent about that? A. Not unless the reader wants to imply indecency.

Q. It is perfectly decent and proper to refer to the portion of the human anatomy sought to be referred to by this item, is it? A. Yes, insofar as being decent is concerned, yes. It has been commonly done.

1508

Q. Now, look at the next item:

"When Chipeta, Queen of the Utes, went to Washington, Day pretended that she had been seduced there by an eminent gold standard statesman. He followed the case for nine months, announced the birth of a boy, named by Day for the statesman, and chronicled the alleged boy's growth for years by that name." Do you think that is a perfectly decent and proper allusion to an ordinary occurrence? A. Yes; it is properly reported. Many things in and of themselves are obscene, but the reporting of such in an article is not obscene.

Q. You think the thing reported there was obscene? A. Pardon me, sir?

1509

Q. You think the thing reported by this item was obscene? A. I say that the report itself is not obscene, but the factual thing that is reported in itself is obscene.

Q. You say the factual thing reported in this item is obscene? A. Yes, but not the report.

Q. I see. Now, refer to the July issue, Mr. Croteau. At page 87 the cartoon strip "Exploits of Esky", numbers 55 and 56 on that page, in the center of the page, show a bearded

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1510 figure standing beside Esky with a smile on his face, and Esky with his goggle-eyes and a handful of what appears to be money, and four females or mermaids, and in cartoon number 56 the same individuals with Esky rather goggle-eyed looking at a drawing of a mermaid with breasts fully exposed.

The text underneath it reads:

"You see—women are women the world over. Esky turned to Verne: 'Say, there's something I always wondered about mermaids—'. 'I wouldn't know', replied Verne."

1511 What is your theory as to what is intended to be implied there as to what Esky has always wondered about mermaids? A. I don't think there is any question but what the text to the picture is double entendre all the way through, and one may or may not draw whatever inference he wants to from it. It is obvious, however, that it is intended to be exactly what is implied, and I repeat that this is the worst feature of Esquire.

Q. But, you wouldn't say that this is indecent, would you? A. No, sir; it is in very bad taste.

Q. It is not lewd, lascivious, filthy or indecent? A. Not unless one wants to imply the worst meaning of the double entendre.

1512 Q. May I have Respondent's Exhibit No. 8? Life of September 6, 1943, pages 69, 70, 71, and 72. Those pictures in Life depicting scenes in the farce "Good Night Ladies," shown in Chicago. A. I understand that it was shown there, yes, sir.

Q. You said that certain of those figures were undraped and showed undraped female figures? A. Yes; sir.

Q. Which one of those are undraped? A. These two in the shower scene. It is a shadow shot and this one here is partially undraped.

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Q. At what page is that? A. This is page 70 and 71.

Q. Page 70 is the one you say is partially undraped? A. Yes, sir, and then on page 71, this one is totally undraped. It is a shower scene.

Q. How can you say that she is totally undraped? A. It is obvious by looking at it. It is a shadow shot.

Q. How do you know this particular female doesn't have a garment on? A. Well, I concede that there is no absolute way in which you can define or tell that she has not; but it is obvious that they are intended to be shadow shots.

Q. Did you see this show, sir? A. No, sir, I did not, but I did see that same shadow shot reproduced in a moving picture shown in our town, "Main Street Girl," which was one of the scenes which the Boston Censors objected to.

Q. We are not talking about that, we are talking about these scenes from "Good Night Ladies." And you would not be able to say that these shadow shots do not show females that are fully covered or attired in garments? A. It is just my reasonable assumption that they are undraped.

Q. I see. Now, you have used your imagination on these shadow shots, have you not? You have used your imagination on those? A. Yes, sir.

Q. And have arrived at the conclusion that they are totally undraped? A. I say that it is reasonable to assume that they are.

Q. Reasonable to assume? A. Yes, sir.

Q. But isn't it a fact that this lower one might indicate by this bulge that she has something on her body? A. I think it is just a wrinkle in the torso, sir. It is my impression.

Q. A rather curious wrinkle, isn't it? A. Well, she may be a little flabby around the middle.

Q. But you have used your imagination to undrape this

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*Louis J. Croteau—for Respondent—Cross.*

1516 model in the shadow shot? A. I say that it is a reasonable assumption.

Q. Now, where are the undraped models on page 72?

Mr. Bromley: Well, Mr. Hassell, don't you admit that the woman in this picture is shown as being in a shower bath taking a shower and is it your position that she has on long flannel underwear while taking a shower?

Mr. Hassell: I do not admit any such thing, that she is taking a shower.

1517 Mr. Bromley: But in the picture she is shown as taking a shower and the two men are peeping at her.

Mr. Hassell: But, as a matter of fact, there isn't any such thing. This witness, in his own imagination, has unclothed her.

*By Mr. Hassell:*

Q. Where are the unclothed females on page 72? A. If my memory serves me rightly, I said 6, 7, and 8.

Q. 6, 7, and 8? A. Yes.

Q. On this page? A. Yes, sir.

1518 Q. These here? A. These (indicating).

Q. Now the ones you point to are at the top and two underneath these (indicating)? A. Yes, sir.

Q. And the first one you come to, reading from left to right underneath that is all right, that is draped, is that it? A. Yes, sir, she is.

Q. But the next one to the right of that is undraped? A. My reason is that she is in the process of having removed a brassiere which would have undraped the upper part of her body.



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Q. But this picture doesn't show the brassiere off, does it? A. No, it doesn't, it shows the naked back.

1519

Q. But it doesn't show the front part of the body, does it? A. No, it doesn't.

Q. Are you certain it shows the naked back? A. If my eyesight is good, yes, sir.

Q. But the back is in shadow, isn't it? A. Well, not so much.

Q. Answer it. The back is in shadow, isn't it? A. Yes, it is.

Q. She has a skirt on of some sort? A. I think they call them panties.

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Q. It extends half-way down her thigh? A. Yes, sir, it does.

Q. You say the two lower ones are undraped? A. That is right.

Q. The two bottom pictures on this page 72? A. Yes, sir.

Q. The first one has on panties and she is holding a dark garment in front of her? A. Yes, sir.

Q. She has on a brassiere? A. Yes, sir.

Q. You say it is undraped? A. It is a net brassiere and so are the panties.

Q. You are using your imagination on the net, aren't you? A. It is obvious that is net, it is lace.

1521

Q. I see some lace on the side of it there A. The entire thing is lace, look at the next picture.

Q. I am looking at this picture. A. All right, but they are a sequence.

Q. You say she has got on net panties and a net brassiere? A. Yes, sir.

Q. Can you see through it? A. No, sir, I can't.

Q. You don't know whether it is all net or not, do you?

*Louis J. Croteau—for Respondent—Cross.*

1522

There might be something underneath it? A. There might, yes.

Q. Now the last picture to the right you say is also undraped? A. Yes, sir.

Q. But she has on panties that cover her midsection pretty thoroughly, don't they? A. Well, they are lace panties.

Q. And she has on a brassiere which covers her breasts? A. A lace brassiere, yes, sir.

Q. Now the lace, that is your assumption that it is lace, is it? A. My assumption is that it is a lace pantie with a black fringe attached to it.

1523

Q. You have used considerable imagination, haven't you, Mr. Croteau, in describing or appraising these pictures in Life? A. I have tried to use common sense.

Q. Don't you feel you have used a little more imagination in those pictures than you have in this material that is from Esquire that you have testified to? A. No, I don't feel so.

Q. You are trying to be eminently fair, aren't you? A. Yes, sir, I am.

Q. Now, the July 5, 1943, issue of Life, which is the next Respondent's exhibit. Reference has been made, Mr. Croteau, to Respondent's Exhibit No. 9, to pictures appearing on pages 86, 89, and 90.

1524

Q. In connection with your testimony, I believe you referred to these pictures as showing females, undraped females. Look at this picture on page 86. A. Yes, sir.

Q. You say this model has no clothing on? A. I do not.

Q. What clothing does she have on? A. She has on apparently a negligee with lace trimming and a pair of panties.

Q. The garment she has on covers the upper part of her body thoroughly, does it not? A. Yes, sir.

*Louis J. Croteau—for Respondent—Cross.*

Q. They cover the lower part of the body a good deal down past the middle? A. Yes, they do.

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Q. They expose the thighs and the legs and feet of the model only, do they not? A. That is correct.

Q. Would you call this an undraped female?

Mr. Bromley: I don't think he called it undraped in his direct, Mr. Hassell. He said this was an example of leg art.

*By Mr. Hassell:*

Q. You think anything that shows women's legs is leg art? A. No, not necessarily so.

1526

Q. Do you recall anything similar to this picture in Esquire? A. Yes, sir, I do.

Q. What picture in Esquire is similar to this one, Mr. Croteau? A. If my memory serves me correctly the title of it is "Hew To The Line".

Q. "Hew To The Line, Let The Chips Fall Where They May"? A. I believe that is correct, Mr. Hassell.

Mr. Bromley: I think that is "skirts", Mr. Hassell.

Mr. Hassell: "Skirts", I beg your pardon.

1527

*By Mr. Hassell:*

Q. That would be on page 127 of the August, 1943, issue of Esquire. You say this cartoon in Esquire, page 127, August issue, is the same sort of thing as that shown in Life on page 86? A. Not the one picture but the series of pictures, taking them as a whole.

*Louis J. Croteau—for Respondent—Cross.*

1528

Q. How does the picture on page 86 of Life compare with the picture on page 127 of Esquire? A. Well there is there reference to leg art that is taken into consideration; one of them is obviously a posed photograph, whereas the other is a crayon or color reproduction of a set of legs, and very badly done at that.

Q. Now in the picture on page 86 of Life the model is in a modest pose, sitting with her legs close together, on the edge of a bed, isn't that correct? A. That is correct, sir.

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Q. In the picture on page 127 of the August issue of Esquire the model is lying on the ground. She has on what appears to be a filmy yellow-colored brassiere and a filmy yellow-colored pair of panties which are loose around the thighs, isn't that right? A. That is correct, sir.

Q. And one leg is high in the air while the other one is on the ground or on the floor or whatever it is, is that right? A. Yes, sir.

Q. Do you think that pose is comparable to the pose on page 86 of Life? A. Well, the thing to be considered here is the fact that one is a true life model and the other is a caricature and, I repeat, very badly done.

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Q. Now, the other pictures on pages 89 and 90 show girls in the top picture putting leg makeup on their legs, and the lower picture shows what appears to be dark-skinned girls demonstrating length of bottled stockings. They are lying on their backs with their legs close together but in the air and the midsection of their bodies are very effectively covered, are they not? A. That is correct, sir.

Q. How would you compare those with those pictures appearing on page 127 of the August issue of Esquire? A. On the same basis that I compared the first ones. That those are true life models, whereas these are caricatures.

Q. Will you say that in a true life model it would be

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possible to get a woman as that shown on page 127 of the August issue of Esquire? A. Not unless she was a contortionist.

1531

Q. You don't think a woman could lie down on her back and raise one leg in the air or have somebody push her leg as is shown in this cartoon? You don't think that would be possible? A. I think to some extent, yes, it would be possible, but I don't believe to the extent that this caricature is produced.

Q. Have you ever seen a dancer doing a split, Mr. Croteau? A. Yes, I have.

Q. Their legs are rather farther apart than that aren't they? A. There is a vast difference in doing a split where you hit a hard surface and where you are up in midair.

1532

Q. You are sure you aren't trying to go the limit in behalf of this cartoon in Esquire as against the pictures in Life, are you? A. I concede that it is a very bad and improper caricature, Mr. Hassell, but it is not indecent or obscene.

Q. You are quite anxious to justify it, aren't you, Mr. Croteau? A. It seems to me you are the person that is anxious here, not I.

Q. That will be judged from your answers to my questions.

1533

Now, refer back to the July issue of Esquire, page 141. There we have matter boxed-in showing three dogs or drawings of at least three dogs and a goggle-eyed man with his arms indicating that he is waving the dogs on apparently, and underneath that a heading "Dog's Worst Friend."

Did you read this? A. Yes, sir, I did.

Q. What does it tell? What does it deal with? A. Well, in short, it shows probably what a dog would like to do to a lot of human beings who have abused his natural habits.

*Louis J. Croteau—for Respondent—Cross.*

1534 It is humorous, silly in part, but there is certainly nothing indecent or obscene about it.

Q. You say you are portraying by verse or prose of the habits of dogs, referred to here, with which we are all familiar? A. Yes, sir.

Q. It is not filthy, is that right? A. Not filthy, no, sir. Probably in bad taste, but not filthy.

Q. And you wouldn't say that coupling those well-known habits with the thought or idea that those habits might be applied to the lower extremities of certain persons referred to in this, would be indecent or filthy? A. I didn't apply that at all anywhere in the reading of this thing.

1535 Q. You didn't? A. No, sir, I did not.

Q. Now, look at page 146, the advertisements of Esquire's by-products and the female figures reproduced thereon, and particularly the center one. A. Yes.

Q. Does the center one appear to you to be clothed? A. With the exception of a transparent hat over her buttocks and her thighs, no.

Q. She has no clothing with the exception of that transparent hat? A. That's correct.

Q. And you think it is perfectly proper and decent to portray the figure of a female in that fashion, do you? A. On the contrary, I think it is improper, and, in this case, very bad taste, but I don't think it tends to corrupt the morals of any particular individual.

1536 Q. How is it in very bad taste? A. Well, it is not the accepted standard of good society to present this sort of thing.

Q. Now, refer to page 148, sir, of this issue. Here we have a perfume counter, apparently in a store, and on the counter a placard advertising apparently a perfume en-



*Louis J. Croteau—for Respondent—Cross.*

titled or called "Burning Desire" and under it another placard advertising a perfume called "Baby's Breath," and behind the counter stands a female clerk and in front of the counter an elderly bald-headed white-haired man who possibly is the floorwalker, and the legend underneath says:

1537

"I think, Miss Hill, it might be advisable to display those a little farther apart."

Do you think there is no indecent, lascivious or salacious implication to be derived from this cartoon? A. I don't think so, Mr. Hassell, and I think our National Board of Censors of Motion Pictures didn't think so either, because they allowed it in a picture.

1538

Q. They allowed it in a cartoon? A. It was not a cartoon: it was a scene. I can't recall the picture, but I remember distinctly seeing it.

Q. You don't remember the picture? A. I can't recall, no.

Q. You don't know whether the scene is exactly the same as this or not? A. It is approximately the same thing.

Q. You think this is a plagiarism? A. I doubt very much that it is a plagiarism because this particular scene is an old one, it is a chestnut as old as the hills.

Q. What does it mean to you, Mr. Croteau? A. Here, again, the meaning of this thing is what is inferred by the person reading it. I know this is becoming very irksome to you, but a good many people could apply the meaning that the floorwalker was advising the girl to separate the two signs.

1539

If a person was obviously possessed of a dirty mind he would, of course, give the dirty inference, and he might imply the effect that the idea is that she should separate the signs farther apart.

*Louis J. Croteau—for Respondent—Cross.*

1540

Q. Where would be the joke if you didn't apply the worst implication to it? A. I don't think there is any joke in it. I fail to see the joke at all.

Q. Do you have any reason why such cartoon with such a legend should be included in a magazine such as Esquire?

A. I think the only reason is that in some degree it is entertaining to some people. I mean, it doesn't mean a doggone thing to me.

1541

Q. How would it be entertaining to some people? A. Simply because some people will read it and take it for what it is worth and get a little humor, and somebody else will give it a dirty inference.

Q. You say "take it for what it is worth." I assume that is the way you take it, for what it is worth? A. Yes, sir, and I repeat it doesn't mean a doggone thing to me.

Q. In other words, it might be just so much blank paper, so far as you are concerned? A. Yes, sir.

Q. You can't see the point at all? A. I can, if I stop to analyze it. I can sit down and get either point that I have just explained to you.

Q. I want to hear the other point, the point that has no obscenity. A. It is not obscene unless the individual wants to apply obscenity.

1542

Q. All right. Give me the other point. What is it? A. The other point is that the floorwalker, assuming he is being reasonably efficient, wants the two signs on the counter separated.

Q. For what purpose? A. For the purpose of showing the two items on the counter to better advantage. He is a floorwalker.

Q. And you say that would be the joke? A. I say there is no joke.

Q. You see no point in it at all? A. No, sir, I don't.

*Louis J. Croteau—for Respondent—Cross.*

Q. All right.

Now, let's come to the August issue of Esquire.

1543

Now, refer to the item on page 10, the "Sound and the Fury", under the heading "Considered Opinion." Reading:

"In your May issue (this year, too!) page 93, article entitled 'Broadway for the Boys,' it is said '20 percent don't, 20 percent do, and 60 percent might.' While in no way representing the opinion of the Navy Department, it is the considered opinion of this patrol squadron that 20 percent don't, 20 percent do, and 60 percent don't get the opportunity. Now, you guess which category we fall in!"

Mr. Croteau, to what subject do you think these do's and don'ts refer? A. To the play "The Eve of St. Mark."

1544

Q. I am referring to this part of the play referred to here "20 percent don't, 20 percent do, and 60 percent don't get the opportunity."

Don't get the opportunity for what? A. For whatever one wants to imply, whether it is fun on a leave, whether it is the seeking of a female companion while on leave, or probably, the worst connotation, that you can get out of it, is that probably they are seeking sexual intercourse.

Q. But you wouldn't get that out of it until you had studied it for a long time? A. That is the worst implication one could apply to it, Mr. Hassell.

1545

Q. Wouldn't that occur to you first, or would it occur to you last? A. I don't think it would occur to me first, no, sir. I don't think this particular article, or any articles in Esquire are intended to be sexy, they are intended to be humorous.

They do contain a certain amount of double entendre and if a subject is susceptible to that sort of thing no one can have control over it.

*Louis J. Croteau—for Respondent—Cross.*

1546

Q. You don't think any of the articles in Esquire are intended to be sexy? A. No. Some are risqué.

Q. And if other experts on filth and obscenity who preceded you on the stand had admitted that Esquire was sexy and spicy, has a reputation of being sexy and risqué, you won't agree with them, will you? A. I would not, no, sir.

Q. Now, refer to page 30: "Many Wives Too Many." pages 30 and 31. A. Yes, sir.

Q. Look at the title of that article, the sub-title, the name of the author under which appears "article" and under that a symbol. Do you know what that symbol means? A. A prescription symbol.

1547

Q. A prescription symbol. A prescription that this is a recommended article by Esquire? A. Yes.

Q. What does this article deal with. You read it, didn't you? A. No, sir, just parts of it.

Q. So you would not be able to state what it deals with throughout? A. Not throughout, no, sir.

Q. Since you are not familiar with the article throughout you would not be in a position to pass an opinion upon any part of it, would you? A. Not competently, no, sir.

Q. Now, on page 38 we have the Varga girl picture entitled "Vacation Reverie." Would you say this model is unclothed?

1548

A. Not unclothed. She is partially undraped. The shoulder strap of the left shoulder is unfastened.

Q. Now, in one of the pictures in Life that we were talking about a while ago, you called attention to the fact that a woman standing with her back to the camera had the ends of her brassiere in her hand. A. Yes, sir.

Q. You gathered from that that she was in the process of removing her brassiere. Now, in this picture we have here, Mr. Croteau, this is one-piece garment, isn't it? A. Yes, sir, that is correct.

*Louis J. Croteau—for Respondent—Cross.*

Q. What might be called a brassiere covering the breasts is attached to the balance of the garment? A. That is correct, sir. 1549

Q. Which is quite scanty? A. Yes, sir.

Q. Following the same deductions or reasoning that you followed with respect to the photograph in Life, would you get the idea that this Varga girl at page 38 of the August issue of Esquire is in the act of removing her garment? A. I am not following the same reasoning.

Q. You are not? A. No, sir, I am not.

Q. What reasoning have you thought up since to apply to this? A. I don't think I have thought it up since. I think by looking at this picture here it is obvious this girl is sitting on the sand on a beach, and it is a very common practice for a girl to turn her back to the sun and get a suntan. I imagine that is what this girl is doing. 1550

Q. Where is the sand here? A. You don't see sand or anything else on any Varga picture.

Q. But you have used your imagination to supply a beach which is totally absent in this picture? A. Just the same as you used your imagination yesterday to tell me that there was a springboard upon which one of the Varga girls was sitting.

Q. No, I didn't use my imagination. A prior alleged expert on filth and obscenity supplied that, though. 1551

Chairman Myers: He wasn't an alleged expert.

Mr. Hassell: I think the record will show who supplied it.

Chairman Myers: That is the wrong assumption.

*By Mr. Hassell:*

Q. But you are using your imagination in conjuring up explanations and excuses for the Varga girl pictures? A. I don't have to conjure up any excuses for Varga girls.



*Louis J. Croteau—for Respondent—Cross.*

1552 Q. You don't have to use your imagination to put them in decent and proper and appropriate settings, do you? A. No, sir, I do not.

Q. But here you have to put this person on a beach, don't you? A. I say that is the reasonable assumption.

Q. Now, look at page 73. There we have a color photograph purporting to show this model in natural flesh colors, do we not? A. Yes, sir.

Q. It is entitled "Mood For Red Hair." A. Yes, sir.

1553 Q. And would you, looking at that picture, draw the conclusion that underneath these filmy drapes thrown across the upper and lower parts of this model's body there isn't any clothing? A. I would say that it is very difficult to tell whether or not there is any clothing, just as difficult as it was in the picture in *Life* to tell whether there was any clothing under the girl's lace panties.

Q. Do you see anything to indicate that she is clothed under these drapes? A. No, sir, and I didn't in the other one, either.

Q. Do you think the purpose of the use of this manner of draping a model is to facilitate the male readers and subscribers to *Esquire* in mentally undressing her and removing these drapes? A. No, I do not, sir.

1554 Q. You don't see anything salacious or lascivious in this picture? A. No, sir. I think it is a photograph that does justice and credit to the photographer himself.

Q. Now, refer to page 89 of the August issue of *Esquire*, "Paste Your Face Here." A. Yes, sir.

Q. Showing a girl in a brassiere and scanty panties seated astride over the shoulders of the figure who has no face, but is in a sailor uniform, on sand, with what apparently is intended to be a background of water of some sort.

Do you think there is anything indecent, lewd, or lascivious in this picture? A. There certainly is not.



*Louis J. Croteau—for Respondent—Cross.*

Q. I believe you stated on direct this is an occurrence that is seen every day on the beaches? A. Not every day, but during the summer resort months, I would imagine one would not have to travel or try very hard to see a good many times the same reproduction.

Q. And the fact that this picture is so arranged that the individual readers of Esquire may paste pictures of their faces where the sailor's face was, does not make this picture indecent? A. There is nothing in the picture that conveys indecency, Mr. Hassell—not in my opinion.

Q. You don't think there would be any indecent connotation in the fact that a total stranger who had never seen this girl, could paste his picture here and hang this picture up on the wall of a room as a pin-up and contemplate himself in this position with this woman? A. There is nothing indecent about the position.

Q. You can't possibly see anything indecent about that? A. No, sir; I cannot.

Q. Now, look at page 90, the cartoon in the upper left-hand corner of the page, a women in wedding gown in a factory, apparently, and the legend underneath: "She came directly from the wedding—Boy! That's patriotism".

What do you get out of this cartoon, Mr. Croteau? A. That the subject here was highly patriotic and considered her duty towards her country far more important than her honeymoon.

Q. That is all you get out of it? A. Yes, sir.

Q. You don't get out of it any idea that she was so patriotic that she eschews the first night marriage bed or anything of that sort? A. No, sir; I did not.

Q. That had not occurred to you at all? A. Not at all.

Q. So as far as you are concerned, that cartoon is a wash-out, a blank, a dud; no reaction at all? A. No, it is humorous.

*Louis J. Croteau—for Respondent—Cross.*

1558 Q. Why is it humorous? A. To think a girl was patriotic enough to want to go back to the factory rather than on her honeymoon.

Q. Is that your brand of humor? A. I am frank to admit that to me it is rather humorous.

Q. I see. Now, look at the cartoon on page 105, the lower right-hand corner, with the legend: "Thank God—help at last". A. Yes, sir.

Q. Showing the grinning black girls in the background and the white man in the ragged shorts clinging to a tree on shore and a sailor in a small boat paddling towards shore: "Thank God—help at last". A. Yes.

1559 Q. What do you think this cartoon means? What kind of help is coming to the man on shore? A. Well, it is obvious that the man has probably been lost at sea and is on some South Sea island and is being rescued.

Q. Not rescued from the females in the background, four of which are shown? A. I shouldn't say so.

Q. You wouldn't get this idea at all? A. I wouldn't get that. I wouldn't get it at all. If I wanted to let my imagination run along in that channel, of course I could get it. That is involved there.

1560 Q. Why do you think this cartoon and similar cartoons are published in this alleged risqué publication? A. For entertainment value.

Q. And they have entertainment value when you apply the interpretation you just applied to this? A. Depending on the reader's point of view.

Q. They have entertainment value to you and you interpret it as the reaction of a ship-wrecked sailor who is being rescued by another sailor? A. Yes, sir.

Q. As from hunger and so forth, and not from the females? A. Well, from the looks of the cartoon here, it seemed to me that the fellow was starving to death.

*Louis J. Croteau—for Respondent—Cross.*

Q. So the females are just so much useless inappropriate, inapplicable scenery in the background of this cartoon, so far as you are concerned? A. So far as I am concerned, they are just there to dress up the background.

1561

Q. Now, look at the cartoon at the bottom of page 110 of this August issue of Esquire. A. Yes, sir.

Q. Note the male figures shown in this cartoon, the attitudes, expressions, and so forth. Note the size of the breasts on the female person shown in this cartoon and the name applied to her in the legend underneath which reads: "That's Miss Blimp-ton, our special nurse for low blood pressure patients."

1562

Do you associate her name with the size of her breasts? A. Not necessarily, no.

Q. And those two items, the expressions on the faces and the attitudes of the men shown in the cartoon? A. Yes, sir.

Q. I say, do you associate those? A. Associate them with what?

Q. In the cartoon with the name of the woman? A. Blimp-ton?

Q. The size of her breasts and the expressions on the faces of the men shown in the cartoon. A. It is obvious that there is a connection between the three and it has some entertainment value, but it is not obscene.

1563

Q. The man commenting on a passing woman's breasts by saying "That is our special nurse for low blood pressure patients"? A. There is nothing here that says there has been comment on her breasts. That is the inference.

Chairman Myers: Some women do have large breasts, don't they?

The Witness: I believe so, Mr. Myers.

Chairman Myers: Are they obscene for that reason?

The Witness: I should say not.

*Louis J. Croteau—for Respondent—Cross.*

*By Mr. Hassell:*

1564

Q. Referring to the matter appearing in the article or story of that portion of the magazine on page 144, the article entitled "Offensive on the Home Front", and the last paragraph of the third column: "Dorothy began to cry loudly and headed out of the room. Dizzy and with the taste of blood in his mouth, he noticed how large the uniform made her behind look". Would you say that so characterizing the portion of the woman's anatomy as indicated would be indecent or filthy? A. No, Mr. Hassell. Many women have large posteriors. That does not make them obscene or indecent or filthy.

1565

Q. I am not talking about the women being obscene or indecent, I am talking about this language. A. The language here depicts a woman's posterior and it is not indecent or vulgar or obscene.

Q. To refer to it as here, it is not? A. No, sir; it is not. There are many people that do.

Mr. Hassell: Could we stop here until 1:30?

Chairman Myers: We will adjourn until 1:30.

1566

(Whereupon, at 11:55 o'clock a. m., the hearing was adjourned until 1:30 o'clock p. m.)

#### AFTERNOON SESSION.

(The hearing was resumed, pursuant to the adjournment, at 1:30 o'clock p. m.)

Chairman Myers: All right, gentlemen, we will proceed.

*Louis J. Croteau—for Respondent—Cross.*

LOUIS J. CROTEAU; resumed the stand and testified further as follows:

1567

*Cross Examination by Mr. Hassell (Continued):*

Q. Now, sir, let us take up the September issue of Esquire.

I call your attention to the matter appearing in the third column on page 10: "The Sound and the Fury", headed "Conservative Suggestion", and I read:

"Recently I have read that Varga paints all his models in the nude and after that puts their clothes on. (I mean the pictures, of course.)

1568

"Why doesn't he leave them as they are, thereby cooperating in this National Emergency by conserving paint?"

And signed: "The Height of Expectation".

Do you believe that, in the event the Varga girl shown in these issues was painted without the covering that most of them have, their salaciousness would be enhanced? A. No, I am afraid I do not agree with that, Mr. Hassell.

Q. Now, will you look at the Varga girl picture on page 38 of this issue and the verse: "Military secrets", noting the diary in the model's hand and the expression on her face. Would you say that the garment that this model has on serves to emphasize her nudity or not? A. I should say not, Mr. Hassell.

1569

Q. You would not think the picture any more objectionable if that garment was not on it, would you? A. I should think not, sir.

Q. You say that picture is not indecent, lewd or lascivious? A. Well, I repeat what I said this morning that it is not a true characterization of any true individual. It is a composite picture.



*Louis J. Croteau—for Respondent—Cross.*

Q. It is a what picture? A. Composite picture.

1570

Q. What do you mean by "composite"? A. Well, it is made up. It is a picture that is made up from several photographs which the artist works from and makes his interpretation of what is a true Varga girl. It is not individual.

Q. How do you get that out of looking at the picture or from looking at the picture? A. I didn't get it from looking at the picture, sir.

1571

Q. I see. So, in your opinions and views you have expressed heretofore you have gone beyond the picture itself, have you, into some other store of information not disclosed, of the picture and the verse accompanying it? A. Up to my coming here I went by only what I saw in the magazine, not knowing how Varga did various pictures. I have since been informed that he draws them from actual photographs, but not one.

Q. Who informed you of that? A. I believe, if my memory serves me correctly, the editor of Esquire.

Q. And you think that has a bearing on whether or not the pictures are indecent? A. I do; yes, sir.

Q. On page 43 we have another one of the cartoons that counsel has denominated or called the Sultan type of cartoon.

1572

This shows two girls not entirely clad, on a rostrum, and the Near East gentleman in turban, apparently auctioning them off, and in the audience is what looks like an American soldier with a cigarette in his mouth, and a tank is shown in the background.

Under the picture is the legend: "Sold American."

What would you think the soldier who has the money in his hand and is handing it up to the auctioneer, would do with two slave girls in a war zone? A. Well, I think



*Louis J. Crôteau—for Respondent—Cross.*

primarily the picture is meant to be humorous. Implying the worst inference that can be drawn from your description, it is very obvious that he intends to have a good time with them.

157

Q. I see. Do you take exception to that description of them, Mr. Crôteau? A. No, not so, if your mind is running along in that channel.

Q. Well, what channel would your mind run in? How would you describe it? A. To me it is simply humorous; it has entertainment value.

Q. How does it have entertainment value? A. We have every week, I think, the "Sold American" program by Lucky Strike, and the Sultan feature of cartoons is not unusual, and I think it is a combination of the two.

1574

Q. A combination of what two, sir? A. Of the Sultan feature and the radio program that we hear, "Sold American". It is intended to be humorous.

Q. Did you have in mind that the Sultan cartoon is a feature in this magazine Esquire when you gave your testimony of that? A. Yes, sir; I have seen it for a number of years, I believe, in Esquire.

Q. So, in appraising this cartoon, you had in mind what you have seen in other copies or issues of Esquire? Is that correct? A. I associated it with what I have seen previously.

1575

Q. And you think there is no indecent or salacious connotation to be had from that picture? A. Not unless the individual wants to imply it.

Q. Look at page 65, the cartoon there. There we have the cartoon of the man with the checked apron leaning out the kitchen door, and the milkmaid, who is curvaceous, delivering the milk, and underneath this legend: "Come back later, sweet—my wife hasn't left for the factory yet."

*Louis J. Croteau—for Respondent—Cross.*

1576

Do you think that cartoon conveys any idea of a liaison between the milkmaid and the husband? A. Yes, I do; Mr. Hassell. I think it is obvious that the connotation here, and the pictorial description of the two subjects is intended to show that at least these two individuals will get together at some later time and probably do a little necking or something.

Q. But you see nothing indecent in that? A. No, sir; I do not.

1577

Q. Now, look at the cartoon on page 66; showing the girl seated in a man's lap—that's the next page, up at the top—in very close embrace with the man in whose lap she is seated. A. Yes, sir.

Q. Is that a common every-day scene, scenes of that sort? A. Well, it is not one that I see every day. It is humorous. I do not contend that it is probably the best form of entertainment, and it certainly depicts a certain amount of necking, but the fact that the mother is there with apparently a housekeeper or someone, is certainly indicative to me that there is nothing sexy about it.

1578

Q. You think there would be nothing sexy about that position of the two young people? A. Well, I will concede that it is a rather risque necking scene, but it does not actually imply obscenity.

Q. You think there is nothing indecent about it? A. No, I don't believe it is indecent. Probably improper.

Q. Now, look at another cartoon on page 84. Note the necking couple seated on the couch in this cartoon, and particularly the juxtaposition of the mouths of the two. Would you say that this is as bad a cartoon or as sexy or as suggestive or whatever you want to call or apply to it as the one you just looked at on page 66? A. In my opinion,

*Louis J. Croteau—for Respondent—Cross.*

it is in the same classification. It is just that sort of thing which the other one represents.

Q. You wouldn't say it is worse by reason of the fact of the position of the mouths here shown and so forth? A. No, I wouldn't say it is any worse, Mr. Hassell. As a matter of fact, the mouths are very badly done.

Q. Now, turn to page 86: "Goldbricking with Esquire".

A. Yes, sir.

Q. And note the item at the beginning of the column at page 86, at the bottom. A. Yes, sir.

Q. "A sergeant was home on emergency furlough to be with his wife who was expecting a baby". Have you read that? A. Yes, sir; I have.

Q. Do you find anything suggestive in that? A. No, I am afraid that I don't, Mr. Hassell.

Q. You don't find anything at all suggestive of any impropriety? A. No. I will concede that it is probably improper.

Q. Do you find anything suggesting indecency in that?

A. No, not indecency, sir.

Q. Now, on page 87, at the bottom of the third column.

A. Yes, sir.

Q. "She: 'Would you like to see where I was operated on for appendicitis?'".

"He: 'No, I hate hospitals.'"

Do you see any indecency suggested in that alleged joke? A. One can be inferred if the individual wants to imply the indecency. However, it is a very corny joke; it is as old as the Gay '90s.

Q. What is the one that can be inferred? A. Well, the worst would be that she would probably show him where her appendicitis scar was.

*Louis J. Croteau—for Respondent—Cross.*

1582

Q. Now, look at page 102, the full page color cartoon shown thereon. Note the scene of the man and the young lady lying on the beach with her legs cocked up and underneath the cartoon at the bottom there is a quotation of apparently what the man is saying: "Ain't it a damn shame—plenty of water on this island, plenty of food, and now I get hallucinations".

1583

What sort of hallucinations do you think that this refers to? A. Well, of course, the vision of the woman lying on the beach which, in all probability is so and not a hallucination, and granting the worst, that could be inferred from it, there is little that he could do about it in this particular condition.

Q. You think there is nothing indecent or there is no indecent connotation to be drawn from that? A. Not in my opinion, sir, no.

Q. Now, refer to the October issue, page 10, the third column at the top, "The Case of the Classy Chassis", purporting to be a letter from a reader of Esquire. Down in the middle of the second paragraph it states:

1584

"Though my fiking for the Varga wenches is supreme, I would not replace the chassis on page ten for a Varga dame. It is too bad you could not provide a larger of such photo, so that we, who appreciate such shapely forms, could pin up. A spot has been reserved on my wall to deposit such a dish. Why not give us the face."

Do you agree with the writer of this letter in his reference to the Varga girl pictures as "Varga wenches"? A. No, I do not, Mr. Hassell.

Q. What is a wench? A. A wench is a rather lewd, obscene woman.

Q. I see. When reference is made to "such a dish", referring to a woman or a picture of a shapely woman, when

*Louis J. Crôteau—for Respondent—Cross.*

such a reference is made by a man, what does he mean? A. In this particular instance I fail to see how it could mean anything, because the picture which he referred to was a silhouette of a woman, fully clothed in trousers, and without a head. It didn't make much sense to me at all.

1585

Q. I see. Now, refer to page 37 of this issue. We have a cartoon in the lower right-hand corner showing a white man seated on a beach, apparently with a tropical scene in the background, and a native woman unclothed above the waist looking at a hula dancer tattooed on his biceps, which he is apparently flexing. A. Yes, sir.

Q. Do you think any objectionable connotation can be derived from that cartoon? A. I do not. The only thing I could get out of it is that it is just plain silly.

1586

Q. I see. Now, refer to pages 38 and 39.

Mr. Bromley: Mr. Hassell, would you mind telling me what dirty interpretation you put on that harmless little cartoon?

Mr. Hassell: I will when I take the witness stand.

Mr. Bromley: I thought you might help me out now. I don't have the slightest conception of what you think it portrays.

Mr. Hassell: It wouldn't occur to counsel that possibly this hula dancer is doing the "bump", as described by this witness?

1587

Mr. Bromley: On the arm?

Mr. Hassell: On the arm. The sailor is making this girl do that.

Mr. Bromley: That is what you mean by being dirty?

Mr. Hassell: I refer to what the cartoon shows.

*Louis J. Croteau—for Respondent—Cross.*

*By Mr. Hassell:*

1588

Q. Refer to pages 38 and 39. Have you read the article: "Wise Men Pick 'Pyknic' Girls"? A. Yes, I have, sir.

Q. Do you consider the references to the development of the body of the woman discussed, or types of women discussed, not to be indecent? A. They are not indecent, sir. They are just practical.

1589

Q. You think that a man could read this article and be assisted in the type of wife he would pick? A. I don't think it would help him to make up his mind at all, no, sir. It has entertainment value, but I don't think it makes any individual reach any concrete decision.

Q. Now, refer to pages 43-44, the Varga girl, "Torches at Midnight". A. Yes, sir.

Q. Would you agree that this model is in a recumbent position? A. Yes, I do.

Q. That she is quite scantily clad? A. She has on a diaphanous teddy suit, if that is what you mean.

Q. And that is principally the only garment she has on? A. I think probably she has stockings on the legs, very sheer, but I think they are stockings. I don't think it is the flesh.

1590

Q. Her legs are of a different color than the arms and the upper part of her body? A. Yes, sir.

Q. Do you see the umbilicus through this garment? A. There is a shaded impression. It doesn't necessarily show an umbilicus.

Q. How about the ribs? A. There again you have the shaded impressions.

Q. Is the nipple of the right breast prominent? A. The mound itself is prominent. There is nothing there to distinguish the nipple.



*Louis J. Croteau—for Respondent—Cross.*

Q. You don't see a point in the drawing? A. Well, all breasts have a point.

1591

Q. Well, you don't see a point in this drawing, in the drawing of this breast? A. Yes, there is a point in this one, Mr. Hassell.

Q. Do you think this model would be less or more enticing were she to be shown without the diaphanous covering? A. I don't think it would make a confounded bit of difference. I don't think it would improve her any.

Q. You don't think she would be any more indecent if she didn't have anything on? A. No, not in comparison with a living model who performs in just this sort of attire, namely Diane Rolland, who is a strip queen artist, and she wears exactly this when she goes on the stage and proceeds to take off the entire thing with the exception of a covering over the pubic mound.

1592

Q. Apparently this model hasn't any such covering on, has she? A. It is not shown in the picture, no, sir.

Q. You are thinking beyond this picture to some strip teaser, comparing this picture with a strip teaser you have seen in the past, is that it? A. Only two weeks ago, yes, sir.

Q. That is what you are doing when you say there is nothing indecent about this picture? A. I fail to see that it is any more indecent in here than it is on a public stage and it is generally accepted by the public and viewed by the public.

1593

Q. Not this particular model. A. No, but one extremely alike and dressed in just that sort of attire.

Q. And red hair? A. No, she is a blonde. Probably that is the only difference.

Q. Now, look at the cartoon on page 49 of this issue, the one with the legend underneath, "Hello, dear, this is the gentleman who sells us our fuel oil." A. Yes, sir.

*Louis J. Croteau—for Respondent—Cross.*

1594 Q. And the cocktail glasses on the buffet table and the cocktail shaker and the woman seated on the big, husky, overalled, red haired man's lap, and apparently an indignant husband fully clothed standing to one side. Do you see any indecent connotation to be gathered from this picture, Mr. Croteau? A. I think applying the worst inference that can be drawn, Mr. Hassell, yes. It is an old counterpart of the old iceman theme and I don't think anyone needs an awful lot of imagination to break that down.

Q. But you don't think this is indecent? A. I repeat that if you want to infer the worst inference, yes, it is.

1595 Q. What would be an inference that is not the worst or some other inference? A. Apparently the worst inference that you could draw would be that there has been something connected with sex between the two. You could withdraw that inference and say that they were just having a good time and had a couple of cocktails and she was seated on his lap. You can go from one extreme to the other.

Chairman Myers: Maybe he was delivering fuel oil in a cocktail shaker.

The Witness: That is true, too.

*By Mr. Hassell:*

1596 Q. What is the reasonable inference to be drawn from that cartoon, Mr. Croteau? A. Well, that depends on what the individual who is viewing this particular subject thinks. The reasonable one that I would draw is that they are apparently on a necking party and that they have gone pretty far.

Q. And the husband is apparently indignant, judging from the expression on his face? A. If he is any kind of a husband he should be.

*Louis J. Croteau—for Respondent—Cross.*

Q. Now, pages 56 and 128. "The Portrait Above The Fireplace." This is a prescribed story as the symbol indicates? A. Yes, sir.

1597

Q. Did you read that story? A. Yes, sir, I did.

Q. Would you say that the confronting of a man who has idealized the picture of a strange woman as that of his mother, whom he never knew, and being finally, in fact, the picture of a madam of a bawdy house, that there is a filthy connotation or inference to be drawn from that story? A. I don't know as I concede the word "filthy." I think in this case the individual got an awful let-down as to what he had idealized, when he found she was a madam or a prostitute.

1598

I repeat what I said this morning, that in itself prostitution is obscene, but the reporting of prostitution is not.

Q. And you don't see anything indecent or filthy or lewd or lascivious in that story? A. Not in the treatment of this article, no, Mr. Hassell.

Q. Now, refer to page 93, "Goldbricking With Esquire."

Have you read the second item in the first column of page 93? A. Yes, sir, I have.

Q. About the man seated in the lobby being solicited by a woman? A. Wait a minute.

Q. The second article from the top, the first column of page 93. A. Yes, sir, I did.

1599

Q. And he says, "Liquor is my weakness." A. That is correct, sir.

Q. Do you agree that that item or joke or whatever you want to call it does imply that the man was solicited by a prostitute? A. It implies impropriety, yes, sir.

Q. Do you think there is anything indecent about that joke? A. No, sir, I do not.

Q. Now, look at the third item on that page, the one immediately under the small cartoon. A. Yes, sir.

*Louis J. Croteau—for Respondent—Cross.*

1600 Q. "A Pullman porter who had started out on an all-night run had his trip cancelled." And it goes on to tell that he went home and he saw some shoes, or some feet, sticking out from under his bed, and he says to his wife, "If dem shoes stickin out from under the bed ain't got no feet in 'em, Ah is gonna shave," when his wife asked him what he was going to do. A. Yes, sir.

Q. Does that joke, if it may be so called, convey any indecent, lewd, or lascivious connotation to your mind? A. Not to my mind. It may to some, I grant you that.

1601 Q. What would it convey to your mind? A. The fact that he says, "If dem shoes stickin out from under the bed ain't got no feet in 'em"—there is nothing here to show the shoes have feet in them. They may or may not have.

Q. I see.

Now, refer to item 17, which is the second item in the fourth column of that page. A. Yes, sir.

Q. "What does f-e-e-t spell, Johnnie." Have you read that? A. Yes, sir, I did.

Q. Do you think there is anything indecent, lewd, or lascivious in that alleged joke? A. No, sir, I do not. I think it is improper.

1602 Q. Now, refer to pages 104 and 105, "The Sporting Scene." Did you read that? A. Yes, sir, I did.

Q. And you have that article or story in mind? A. Yes, sir.

Q. And it winds up:

"She married a 4-F guy and they were very congenial, having twenty-one progeny just as fast as nature would allow." A. That is right, sir.

Q. And, "One day her husband said: 'Kids are handy as tax exemptions, but when I think of bills I feel faint.'

"Luberta went to her spouse and patted him tenderly.

*Louis J. Croteau—for Respondent—Cross.*

"I know, Honey, but you don't realize how much fun some-  
thing can be without so damn much advice." 1600

"She meant doing the childrep's washing, possibly."

Do you think there is an obscene, lewd, or lascivious or indecent connotation to that story? A. I don't think there is any lewd, lascivious or indecent connotation to it. I think the story is in bad taste and probably should not have gone as far on the borderline as it did, but it is not obscene.

Q. It is on the borderline, though, isn't it? A. It is very descriptive, yes, sir.

Q. Now, refer to the November issue of Esquire, the Varga girl picture at page 46, and the verse: "Virtue Triumphs." 1601

Did you read this verse? A. Yes, sir, I did.

Q. And considered it in connection with the picture? A. Yes, sir, I did.

Q. The model sitting cross-legged, dressed apparently in a girdle of some sort? A. Yes, sir.

Q. And the expression on her face? A. Yes.

Q. And you say there is nothing lewd or indecent or lascivious in that picture? A. If there is I fail to see it, Mr. Hassell.

Q. In connection with the verse, of course? A. Yes, sir.

Q. If one of the other witnesses here who preceded you had testified that he considered this the worst or most objectionable of the Varga girl pictures, would you agree with him? A. I am afraid I would not, Mr. Hassell. 1602

Q. You think there are others worse than this? A. I think there are one or two that are, in my opinion, a little worse.

Q. Now, look at page 52. This is another one of the sheik or Sultan cartoons, a full page cartoon in colors. A. Yes, sir.



*Louis J. Croteau—for Respondent—Cross.*

1606

Q. It has underneath, "Such a neighbor—always borrowing," and shows one Oriental gentleman waving his arm to another in the background going away with two girls, very scantily clad. What do you think this cartoon implies, Mr. Croteau? A. I think it implies impropriety. I concede that the locale of the scene is where concubines are commonly used and I will go so far as to say that probably they are exchanged between Sultans.

That is the worst inference you could possibly place on this cartoon.

1607

Q. Now, what is the best inference you could place on it? A. Well, I should think that probably the Sultan who was walking away with the two girls is taking them away for a good time other than sex, for entertainment in his own palace.

Q. Now, look on page 61, the first sentence of the textual matter, describing this color photograph on page 60.

"The Esquire Canteen." Reading: "Here are five perfectly good reasons why service men and mere civilians pause for laughter, libation, and libido at the Folie Bergere."

Do you know what libido means, Mr. Croteau? A. I believe it is a form of hilarity or liberality associated with fun.

1608

Q. Would you say associated with sex? A. Probably in some instances, yes, Mr. Hassell.

Q. You see nothing objectionable in that language coupled with the picture on page 60? A. No, I don't, Mr. Hassell. The picture is a scene that is very common in theaters today. As a matter of fact, I have seen chorus girls with a lot less clothes on.

Q. You have had quite an experience, far more than the average individual, have you not? A. Well, my duties require that I do. It is not from a matter of choice, I promise you that.



*Louis J. Croteau—for Respondent—Cross.*

Q. But you have had the experience with at least six or eight burlesque shows a week? A. Yes, sir. 1609

Q. Does that run all the year? A. It runs 40 weeks a year, Mr. Hassell.

Q. Forty weeks a year? A. On an average.

Q. Now look at page 66, cartoon at the top of that page, two soldiers with their hands up and broad smiles on their faces, surrounded by natives, apparently South Sea Island girls, with nothing on but sarongs around their middles, and the title "It's no use, Sarg—we're outnumbered—Yipppeeee." 1610

What do you think that picture connotes, Mr. Croteau? A. It may connote the fact that they are tickled to death to give up to the natives. The worst inference that you can place on it is that perhaps at least they see some women around and having been probably on duty for a good number of years or months or probably away from female company they are tickled to death to be caught by them.

Q. But you see nothing indecent in that picture? A. Nothing indecent, no, sir. Probably in bad taste.

Q. Now look at the cartoon on the opposite page, page 67. A. Yes, sir. 1611

Q. There is a female person in the center of that cartoon. Would you say with over-sized breasts, considering the balance of her person? A. Well, it is a very poorly done cartoon, and I will concede the over-sized breasts.

Q. And the over-sized hips and thighs? A. I will concede that, Mr. Hassell.

Q. And the legend underneath that: "At the U. S. O. in New York they just gave us cigarettes." That is what one of the soldiers is saying? A. Yes, sir.

Q. Do you derive any indecent connotation from that cartoon, Mr. Croteau? A. I do not. The worst I could derive is an impropriety.

*Louis J. Croteau—for Respondent—Cross.*

1612 Q. What would the impropriety be? A. Well probably as suggesting that they do some necking or do anything other than smoking these Turkish pipes.

Q. Now, turn to page 73, the color photograph "Golden Mould." This model is in a recumbent position, is she not?

A. Yes, sir, she is.

Q. Apparently she is only covered with a sheer or wet and sheer silk-like material thrown across her body and whatever she is lying on? A. That is correct, sir.

Q. You wouldn't say that there is any indication of any clothing underneath this material she is covered with? A. It does not indicate any clothing, no, sir.

1613 Q. Now, do you consider that picture indecent, lewd, or lascivious in what it reveals? A. Positively not.

Q. Page 77, "First Nights and Passing Judgments." Did you read that article? A. Yes, sir, I did.

Q. Did you note the references in paragraph numbered 1? A. Yes, sir.

Q. 10, 15, and 21? A. Yes, sir.

Q. And your testimony is that the language there used is not filthy? A. Not if used as a true transcript reporting actual details. I say that is a fairly reasonable example of reporting. I wish that my agents could do as well.

1614 Q. And perfectly proper to appear in a magazine of this sort, Mr. Croteau? A. Yes, I believe it is.

Q. Now look at page 83, the cartoon at the upper left-hand corner of that page with the legend underneath. "My date's at the awkward age—all hands and no dough." A. Yes, sir.

Q. Does the "all hands" reference in this legend as being mentioned by one girl, who has her mouth open, to the other, seated, have any connotation of indecent use of the hands by the escort of this person? A. If the reader wishes to apply it, obviously.

*Louis J. Croteau—for Respondent—Cross.*

Q. What would you imply from it? A. I imply exactly what it says. He is at an awkward age and he has awkward hands.

1615

Q. Awkward hands? A. Yes.

Q. It doesn't say awkward hands, does it? A. Well, he is all hands. An awkward child is probably all hands and all limbs.

Q. Don't you think an awkward child is all feet, usually, he stumbles about? A. Well, that is probably a more accurate description.

Q. You see nothing indecent in that cartoon? A. No. The worst inference that one could draw is an impropriety.

1616

Q. Now, referring to page 89, the scantily clad figure in the lower right-hand corner of that picture. A. Yes, sir.

Q. You say there is nothing indecent, lewd, or lascivious in the scarcity of clothing on this model in this color photograph? A. Nothing but what you could see every day on a circus ground or in a theatre.

Q. Now, referring to page 94 and page 95, "Goldbricking With Esquire," and take the fourth item therein, the one beginning at the bottom of the first column on page 94. A. Yes, sir.

Q. And extending up to the top of the next column. A. Yes, sir.

1617

Q. Have you read that? A. Yes, sir, I have.

Q. About the two luscious blondes reposing in the berth of this man when he comes to occupy it? A. Yes. I have read it. Mr. Hassell.

Q. And he tells one of them that he is sorry. "One of you girls will have to leave." A. Yes, sir.

Q. Do you find any indecent, lewd, or lascivious connotation to that alleged joke? A. I do not. I think that in his

*Louis J. Croteau—for Respondent—Cross.*

1618

absentmindedness he made a very frank statement. Of course there is a second interpretation to it, and that is the dirt that is intended there.

Q. Why do you say absentminded? What is there in it to indicate that he was absentminded? A. I imagine if I walked in to my berth and I found two women in it I would be a little bit embarrassed and possibly wouldn't think quite clearly.

1619

Q. And you think this was a slip of the tongue on the part of the man? A. I say that is the inference that I got upon reading this thing. If you want to go back further and want to imply a filthy inference, you can imply exactly what it says here "One of you will have to leave".

Q. A filthy inference, isn't it? A. Yes.

Q. That would be a filthy inference, wouldn't it? A. Yes, sir, it would.

Q. Now look at item 15, which is the fourth item in the fourth column of page 94. A. Yes, sir.

Q. The he and she.

"I see your husband has been promoted to a master sergeant. I suppose he's brilliant and knows everything?"

"She: Don't fool yourself, he doesn't suspect a thing."

Is that a double entendre joke? A. I think it is intended to be, yes, sir.

1620

Q. Do you think it is intended that an indecent connotation should be derived from it? A. Oh, I think the connotation is in bad taste. I don't think it is indecent.

Q. Take item 24, which is the first item at the top of the second column on page 95. A. Yes, sir.

Q. "Home on furlough the soldier was surveying his sweetie whom he hadn't seen in months: 'Slimmer, aren't you?', he asked.

"Yes", she replied, 'I have lost so much weight you can count my ribs.'

*Louis J. Croteau—for Respondent—Cross.*

“Where,” asked the G.I. with a gleam in his eye, “do I start?” 1621

What do you think that means, Mr. Croteau? A. I think it means exactly what it says. I think he intends to start counting the ribs and he is making no bones about it at all.

Q. Do you think that is an indecent connotation? A. It is an improper connotation; it is not an indecent one.

Q. Item 27, which is the last item in that column—  
A. Yes, sir.

Q. “The beautiful Army hostess, newly arrived in camp, thought she would take a nude dip,” and so forth. She scampers out of the water without any clothing on and gets the dishpan for a shield, and there is no bottom in it. 1622  
A. Yes, sir.

Q. What do you think is the meaning of that? A. The meaning of that is plain. It is obviously in very bad taste. I don’t see that you can call it as obscene. It is rather an embarrassing situation and probably very improper.

Q. Would you say that it is the reporting of an indecent incident? A. Of an improper incident; I shall not concede indecency.

Q. You would not say there was anything indecent about it? A. I don’t think so. It is a situation that is brought about in a very natural way and is not planned that way. 1623

Q. Now, look at item 28, immediately under that:

“Have a good time at the party, daughter dear, and be a good girl.”

“Make up your mind, Mother.”

Do you see any indecent connotation in that? A. No. I don’t see that it is indecent. I think it is intended to be humorous.

*Louis J. Croteau—for Respondent—Cross.*

1624

Q. Does it imply that the girl thinks she might not be a good girl? A. She might be a bad girl if she did a lot of necking. She doesn't necessarily have to go beyond that.

Q. Ordinarily, when being a good girl is referred to, what does it refer to, sex contact? A. Ordinarily, I don't believe so.

Q. Look at item 30, the buck private item in the same column, lower down. "I'm afraid we can't have much fun tonight", and so forth. A. Yes, sir.

1625

Q. Do you see any indecent connotation in that? A. No, sir; I don't.

Q. You think that is perfectly proper, do you? A. I think the girl is looking forward to a grand petting party, probably, which does not necessarily imply sex.

Q. The last item in that column, "Pardon me, Miss," said the sentry"— A. Yes, sir.

Q. Do you see any indecent connotation to be derived from that? A. No, sir; I do not see any indecent connotation.

Q. That indicates that this female person is going in bathing in the nude, doesn't it? A. Yes, sir.

1626

Q. And the sentry says: "It ain't against regulations to undress, lady". A. That is correct, sir.

Q. You say it is not indecent for a soldier to suggest undressing to a lady under those circumstances? A. I don't think he suggested it. I think she is undressed. I don't think anything here was prearranged or planned.

Q. Now, take the cartoon joke, the 35 item, the very last column at the center of page 95, showing the soldiers camouflaged as trees peeking at the girls in bathing, and one about to go in, and the legend underneath: "You're sure there are no soldiers around here?" A. That is right, sir.



*Louis J. Croteau—for Respondent—Cross.*

Q. Apparently one girl said that to another. A. Yes, sir.

1627

Q. Is there any indecent connotation that could be derived from that joke? A. I think not, sir. I think the girls are entirely ignorant of the camouflaged pictures and Army procedure. There was nothing intentional on their part.

Q. You think it is perfectly proper for soldiers from behind camouflage, to look at young ladies in bathing in the nude? A. I do not consider it is proper, sir; it is very bad taste.

Q. You don't think there is anything indecent in the picturization of such a scene? A. I say it is not indecent, no, sir.

1628

Q. Item 36, the one immediately following the cartoon we have just adverted to. This is Willy in the bushes and it turns out he is 79, darn it. Have you read that? A. Yes, sir.

Q. Have you read that? A. Yes, sir, I did.

Q. Is there any indecent connotation to be derived from that? A. Nothing indecent. It is in bad taste.

Q. Nothing lewd or lascivious in it? A. I think not.

Q. In your discussions of this testimony with counsel, particularly the Varga pictures, did you suggest to counsel that you were going to supply backgrounds to some of them, or did you discuss that with him? A. I made no suggestion whatsoever, sir.

1629

Q. You didn't discuss that with counsel? A. No, sir; I didn't discuss it with counsel.

Q. Mr. Croteau, would you say that the New Yorker magazine is the same type of magazine as Esquire magazine? A. It is very similar and probably could be placed in the same brackets, yes, sir.

*Louis J. Croteau—for Respondent—Cross.*

1630

Q. It carries the same class of material? A. Yes, sir.

Q. It is published for men? A. It is published for men, yes, sir.

Q. Does it say it is published for men? A. I don't believe it does, no, sir. I think it is generally accepted that it is for men.

Q. That is your conclusion, that it is published for men? A. I understand from the New England distributors that the majority of its circulation is sold to men.

1631

Q. But you didn't derive that from any printed matter to that effect in the magazine itself? A. No, sir; I didn't arrive at that conclusion from any printed matter in the magazine.

Q. Would you say that Time magazine is the same type of magazine? A. I don't believe Time belongs in exactly the same bracket. I believe it is more informative, sometimes probably more scientific, more generalized.

Q. Now, is Time magazine a weekly news magazine? A. Yes, I believe it is, yes, sir.

Q. And Esquire is a monthly magazine? A. Yes, sir; that is correct.

Q. And it doesn't carry news? A. It reports news items at various times. It doesn't carry a regular news feature the same as Time does.

1632

Q. What kind of news items does Esquire carry? A. The reporting of theatrical productions or scientific treatises like Pyknic girls, and so forth.

Q. Is that a news item? A. I said scientific treatises.

Q. I thought you said a news item. A. No, sir.

Q. Your attention was called to a black and white picture some three-inches tall by two inches wide in the third column of page 44 of the August 2, 1943, issue of Time, a picture of Ann Corio. Underneath the name "Ann Corio"

*Louis J. Croteau—for Respondent—Cross.*

is the word "l-o-g-i-c-a-l". What does that mean? A. L-o-g-i-c-a-l, I am afraid I don't know the meaning of it—you mean logical? 1633

Q. I just wondered why "logical" under the name "Ann Corio".

Well, aside from that, that is not a very distinct picture, is it? A. No, but it is a pose in which I have seen Ann Corio on various occasions.

Q. When you saw this picture you thought of Ann Corio as you have seen her at times. Did you? A. Not necessarily. As she is represented right here, sir.

Q. You can't tell from this picture whether she has any clothing on the upper part of her body or can you? Apparently she has. A. I can't tell from the picture, but I can tell you from what I know that she has. 1634

Q. Apparently she has in this picture. Doesn't she have a jacket on, or something? A. Yes. That is what is known in the profession as a leotard.

Q. As a what? A. A leotard.

Q. Now, you think this picture in this issue of Time magazine is comparable to what pictures in Esquire, if any? A. It is comparable to the diaphanous pictures of the Varga girls. As a matter of fact, that leotard is a cellophane-like garment which is worn on the diaphanous nude and under certain light on the stage it is impossible for anyone even in the front row to distinguish that the performer has a garment on. 1635

Mr. Bromley: You mean it is completely transparent?

The Witness: It is completely transparent; yes, sir. We lost a case in Boston about four weeks ago on the same thing.

*Louis J. Croteau—for Respondent—Cross.*

*By Mr. Hassell:*

1636

Q. Now, your attention was called to page 18 of the September 16, 1942, issue of Yank. Do you recall that?

A. Yes, sir; I do.

Q. The picture of Mrs. Alexander Kirkland. A. That is correct, sir.

Q. Gypsy Rose Lee. A. Yes, sir.

Q. That is in black and white, too, isn't it? A. That is right, sir.

1637

Q. And even the umbilicus in this picture is covered, isn't it, Mr. Croteau? A. Gypsy Rose Lee usually keeps her umbilicus covered even in the worst features of her tease. She is probably the most modest of the strip tease artists.

Q. Do you know of any pictures in Esquire comparable to that picture? A. Yes, sir; I do.

Q. What pictures? A. I don't recall the exact issue now, but I think it is the Folies Bergere in which there are five sets in the picture.

Q. Now, your attention was called to Life magazine of July 12, 1943, page 78. The one in the night club. A. Yes, sir.

1638

Q. Do you recall that? A. Yes, sir; I do.

Q. What pictures in Esquire are comparable to this picture, Mr. Croteau? A. I don't quite recall any right off-hand now, Mr. Hassell.

Q. Now, your attention was called to Time magazine of February 15, 1943, at page 40. A. May I interrupt you, Mr. Hassell, to say that on reflection I think that last picture which you showed me in some features recalls the strip pictorials in one of these issues of Esquire.

Q. What strip pictorials? A. Where there are six plates

*Louis J. Croteau—for Respondent—Cross.*

on two pages representing the can-can, the grind and the bump.

1639

Q. Those are the drawings? A. The drawings; yes, sir.

Q. That you stated were very good representations to those movements in burlesque shows? A. That is correct, sir. That is the nearest that I can associate with that picture.

Q. Now, your attention was called to the February 15, 1943 issue of Time, page 40: "Shall I have this baby?" Respondent's Exhibit 14.

Do you recall that? A. I don't know that I do, sir.

Q. Here (handing Respondent's Exhibit No. 14 to the witness). A. Yes, sir; I do.

1640

Q. Will you point out to the Board the humor in that article, if any? A. I fail to see any in it.

Q. I see. What feature in Esquire does that advert to, or is that comparable with? A. I don't know as I can associate it with any particular feature in Esquire.

Mr. Bromley: It is intended to be compared with "Dear Doctor Diddle".

Mr. Hassell: I object to counsel supplying it to the witness. I will get at it.

*By Mr. Hassell:*

1641

Q. Now, counsel has suggested that this was intended to be associated or compared with the "Dear Doctor Diddle" joke. Just suppose you compare it. How would you compare that to the "Dear Doctor Diddle" joke? A. Well, I think it is dry, and it doesn't connote any particular thing: "Have your baby. Don't mention your condition to the sailor". I don't say that it is—

*Louis J. Croteau—for Respondent—Cross.*

1642

Q. Is that article you have there— A. Well, down below here where it says: "That you can take action against the innkeeper", that compares with it to some degree.

Q. But you say there is no joke in this— A. It is a likable type of humor, yes.

Q. Now, you have changed your statement that you formerly made. You do want it understood, and you state now, that this thing has some humor? A. I want it understood that there is a resemblance in the humor in this article as compared to that part of the other. I don't say that it is identical.

1643

Q. You don't see any humor in the "Dear Doctor Diddle" joke? A. I think it runs in a rather humorous vein, yes, if the individual wanted to apply humor to it; otherwise, it did not contain too much of a joke to it, as I see it.

Q. But when I first handed it to you and you read it, you said you could not see any humor in it. A. I had not gone through this part of the paragraph, sir. I was reading over here (indicating).

Q. You hadn't finished reading it until counsel suggested to you that it was to be compared with the "Dear Doctor Diddle"? A. I hadn't read up to there at that time, no, sir.

1644

Q. I show you Respondent's Exhibit 15, being Time magazine for January 18, 1943. Your attention was called to page 75 thereof. What matter in Esquire is comparable to that matter there? A. I think the Eskey features are comparable to this one.

Q. But that is not a cartoon you are referring to there? is it? Isn't it the marked matter in the text of the page? A. You want the marked matter? I am sorry; I was reading this.



*Louis J. Croteau—for Respondent—Cross.*

Q. But you would say the cartoon strip on that page is comparable to the Esky cartoon? A. Well, in character 1645  
it is a cartoon which resembles Esky.

Q. Go ahead with the text of that. A. Well, I associated it with the cartoons in Esquire that I read in one of the features.

Q. What cartoon in Esquire? A. Well, I think they are in the Esky features where the nudes are being depicted as having heavy breasts, and so on, where Esky is peeking from behind the bushes.

Q. It is the language here and not the cartoon, though; is it? A. That is correct, sir.

Q. Just what is the language that reminds you of the Esky strip or cartoon? A. "Each week's strip has been built around a separate guy and decorated with damsels as breasty and near-nude as Caniff dared draw them." 1646

Q. Do you think that is a good description of the Esky cartoons? A. Well, it is certainly associated with it. I should think it is, particularly the mermaids in the Esky strip.

Q. You think it is just as bad or not as bad to describe cartoons by words such as described here on page 75 of Respondent's Exhibit 15, as actually showing the cartoon strip and accompanying them with descriptive words spoken by the participants or actors in this strip? A. Well, I think that I have seen some cartoons that in themselves were obscene, but the description of them was not. 1647

Q. Mr. Croteau, you mentioned Inspector-in-charge, Ten-nyson Jefferson, in your testimony yesterday. Do you know Mr. Jefferson? Do you have personal contact with him? A. The last time I saw Mr. Jefferson was several years ago.

Q. Was he inspector-in-charge then? A. No, sir; he was not. I don't recall the name of the inspector. His name

*Louis J. Croteau—for Respondent—Cross.*

1648 began with a "B" and he lived in Melrose. That's all I recall at this time.

Mr. Ellis: Breslin, isn't it?

The Witness: Breslin, yes.

*By Mr. Hassell:*

1649 Q. Would it surprise you to know that Mr. Tennyson Jefferson, after your testimony yesterday, advised us that you were unknown to him or any inspector handling obscene matter in the office of the inspector-in-charge at Boston? A. It would surprise me if he said that; yes, sir, because I have talked with Mr. Jefferson in his home at Reading at the time of a very important case three or four years ago.

Q. And further, as far as Mr. Tennyson is able to ascertain, you have never visited that office? A. That is correct, not since I have been the executive secretary.

Q. Are there any publishers who contribute to the fund maintaining your organization, Mr. Croteau? A. To my knowledge; no, sir.

1650 Q. Do you know the business of all the contributors and members of your organization? A. No, I do not, Mr. Hassell.

Q. You could not testify positively that there are no publishers contributing to it? A. Not under oath; no, sir.

Mr. Hassell: That's all.

Chairman Myers: Any questions, Mr. Bromley?

Mr. Bromley: Yes, sir.

*Louis J. Croteau—for Respondent—Redirect.*

*Redirect Examination by Mr. Bromley:*

Q. You said yesterday that in the theatrical world, the phrase "Go flub your diddle" was an accepted phrase. Tell me what it means, please. A. I think that as it is intended in the burlesque presentation, it means "Go jump in the lake", or "go chase yourself", or something of that effect.

Q. If "diddle" is used in that connection in a burlesque or other show in Boston, is any attempt made to expurgate it or take it out of the script? A. I know I have never attempted to take it out, nor has the city censor.

Q. Now, are most of your activities in connection with the censorship or inspection of magazines, exercised on behalf of the defense of publications or in support of the prosecution of publications? A. I think it is safe to say that approximately 95 per cent is devoted to the support of the prosecution. This is a very unusual case.

Q. In other words, it is very unusual for anyone representing the New England Watch and Ward Society to appear as a defense witness in support of any publication. Is that correct? A. That is correct, sir.

Q. So far as you know, have any of the Thorne Smith novels referred to in the advertisement of the Literary Guild in the March issue of Esquire, ever been banned in New England? A. No, sir; I know they are being sold there.

Q. During the noon recess, at my request, did you read the article "Many Wives too Many", appearing in the August issue of Esquire? A. Yes, sir; I did.

Q. Does the reading of that article change your opinion in any way as to the obscenity or decency of the August issue of Esquire? A. No, sir.

Q. Did you find anything in the reading of that article

*Louis J. Croteau—for Respondent—Redirect.*

1654 "Many Wives too Many" that is in any wise lewd, lascivious, obscene, indecent or filthy? A. No, sir; I did not.

Q. Can you tell me whether or not your opinion as to the decency of Esquire is or is not reinforced by other censorship bodies with respect to these cited issues? A. I think my opinion is reinforced by other bodies such as the New York Society for Suppression of Vice and the Illinois Vigilante Society, and so on.

1655 Q. You mentioned, I think, a thing I didn't know before, that the city of Boston had a city censor. Is that a public office like police commissioner? A. That is part of the mayor's office known as the licensing division, and the head of that division is known as the city censor.

Q. Does he have authority to prevent the sale and distribution of obscene magazines, among other things? A. Not an obscene magazine, no, sir. That jurisdiction lies in the power of the commissioner of police.

Q. Has the city censor, police commissioner, or any other official in Boston ever banned any of the eleven issues of Esquire now under consideration? A. Not to my knowledge.

Q. Do you know what the National Order of Decent Literature is? A. I do.

1656 Q. What is it? A. It is an organization devoted to the examination of magazine publications.

Q. And on its list there appears from time to time such publications as in the judgment of that organization are obscene or indecent. Is that so? A. That is correct. We receive the list regularly.

Q. Are you familiar with the list? A. Yes, sir; I am.

Q. Can you tell us whether or not any of these eleven issues has appeared on this proscribed list of N.O.D.L.? A. As a matter of fact, I know they never did.

*Louis J. Croteau—for Respondent—Redirect*

Q. I hand you what purports to be ten lists running from January, 1943, through October, 1943, and ask you whether those are the lists of the N.O.D.L. listing magazines which are by that organization held to have sinned against one or more provisions of its code for clean reading?

1657

Mr. Hassell: I object—

Mr. Bromley: I am just identifying them, Mr. Hassell.

The Witness: Yes. Facsimiles of the same list I have received at the office.

By Mr. Bromley:

1658

Q. Are you familiar with the Code for Clean Reading of the National Order of Decent Literature? A. I am, but I have never committed it to memory. I have seen it from time to time and I am familiar with it as I have seen it here.

Mr. Bromley: I offer these ten lists in evidence.

Mr. Hassell: I object, if it please the Board. Here we are attempting to pile dubious matter on top of dubious matter. Here are some lists that this witness undertakes to identify, of an organization that has an alleged code or a code with respect to decency in literature, that is not in evidence.

1659

I submit that this matter would be of no value to the Board.

Mr. Bromley: May I say in answer merely that the code for clean reading of that organization appears on every list so the standard is expressed?

Chairman Myers: That may all be true. I doubt the competency of that on the further ground that

*Louis J. Croteau—for Respondent—Redirect.*

1660

it is probably hearsay as far as this witness is concerned.

The objection is sustained.

Mr. Bromley: May they be marked for identification?

Chairman Myers: Surely. They should be marked for identification.

(The documents above referred to were marked Respondent's Exhibits 17-A to 17-J, inclusive, for identification.)

1661

*By Mr. Bromley:*

Q. In connection with the picture in Esquire of the five girls from the Folies Bergere, I show you an issue of Life for August 16, 1943, and ask you whether there is therein contained pictures of the same night club presentation?

A. Yes, sir; the same night club presentation except they are not in color and probably not as effective.

Mr. Bromley: I ask that this issue of Life for August 16, 1943, be marked for identification.

1662

• (The document above referred to was marked Respondent's Exhibit No. 18 for identification.)

Mr. Hassell: I object to that on the same grounds.

Chairman Myers: That will be noted when it is offered.

Mr. Bromley: I offer this issue of Life in evidence. It is now marked for identification Respondent's Exhibit 18. I call particular attention to the pictures on pages 63, 64, 65, and 66.



*Louis J. Croteau—for Respondent—Redirect.*

Mr. Hassell: The same objection.

Chairman Myers: It is admitted subject to the objections Mr. Hassell has made heretofore.

1663

(The document heretofore marked for identification Respondent's Exhibit No. 18 was received in evidence.)

Mr. Bromley: I want to call attention to the pictures on the first and second pages of the series.

Mr. Hassell: Did you say first and second pages, counsel?

Chairman Myers: Pages 63 and 64.

1664

Mr. Bromley: Will you mark for identification, please, the issue of *Life* for May 31, 1937?

(The document above referred to was marked Respondent's Exhibit No. 19 for identification.)

Mr. Bromley: I offer that issue in evidence, which has now been marked Respondent's Exhibit No. 19 for identification, calling particular attention to the Minsky Brothers article and the spread of pictures on page 21.

Mr. Hassell: I object to this and I might also add to the objection that I don't see that it is proper redirect examination.

1665

Chairman Myers: What have you to say on that point, Mr. Bromley?

Mr. Bromley: It is redirect because of his attack on the disclosures made by the pictures which I introduced on direct examination.

Mr. Hassell: I submit, if the Board please, I sim-

*Louis J. Croteau—for Respondent—Redirect.*

1666

ply went over the testimony that counsel went over in his direct examination, which I had a perfect right to do.

Mr. Bromley: Well, I have tried to make a selection of pictures out of the many, many thousands which are as close as I can think of to the Esquire pictures.

Now, you seemed to think, Mr. Hassell, that the pictures I introduced did not contain the same amount of undrapedness as Esquire's, so I have got some new completely nude women taken on the burlesque stage.

1667

Chairman Myers: Your objection is overruled, and it will be received subject to the conditions previously stated.

(The document referred to was marked Respondent's Exhibit No. 19, and received in evidence.)

*By Mr. Bromley:*

1668

Q. Assuming that burlesque has a sensory appeal, Mr. Croteau, to many people, would that fact, in your opinion, render the descriptions of burlesque or illustrations thereof obscene, lewd, lascivious, filthy, or indecent? A. No, Mr. Bromley. I repeat again, it may be becoming irksome, but I want to say many things in and of themselves are obscene. Any number of things may be very offensive to society but the description of them in a report or in an article does not constitute obscenity.

Q. Is it your position also that people can draw obscene, lewd, lascivious, filthy and indecent suggestions or implications from almost anything that relates to sex? A. If an individual were so constituted that his mind were deranged

*Louis J. Croteau—for Respondent—Recross.*

and he may be a sexual pervert and degenerate or moron, he may derive a sexual implication from anything. A picture, a piece of hair, a piece of clothing, that is commonly acknowledged by all psychiatrists. I do not purport to be one. I don't know anything about it, I only have a general knowledge of the thing, but on the whole I can say that it is so.

1669

Mr. Bromley: That is all.

*Recross-Examination by Mr. Hassell:*

Q. Does burlesque have a sensory appeal? A. To a minority it does, yes, sir. I mean I visit burlesque houses and see the same three or four rows of bald-headed men down in the front row week in and week out and to me I can't see but that those men are abnormal to go and see that sort of thing.

1670

Q. But to you, Mr. Croteau, that has to visit burlesque shows six times throughout the week, it is just a sort of a pain in the neck, isn't it? A. It is a doggone unpleasant job, Mr. Hassell.

Q. Now, you said you read this article in Esquire, "Many Wives Too Many"? A. Yes, sir.

Q. Do you think it is not indecent to visualize, as in an article of this sort, having six wives and thereafter assigning to them each their respective duties, and especially assigning them to their duties and discussing their duties with respect to sex? You say that that is not an indecent matter? A. No. I was quite impressed when I read the article with the amount of liberality that the article had taken. I think he went just as near the brink as he could, but I fail to see that it was indecent. It is certainly in bad taste, the entire article is.

1671

*Louis J. Crôteau—for Respondent—Recross.*

1672

Mr. Cargill: While Mr. Hassell is finding his voice, I would like to ask a question.

Did I understand you to say in your former testimony that the Watch and Ward Society had changed its policy and rules on obscenity?

The Witness: No. Its rule on obscenity is not a hard and fast rule, sir. It is more elastic now and it has been since 1934. Prior to that time they considered the thing as a whole and not parts of it.

Mr. Cargill: Well, is that generally known? Was it advertised that they had changed their rules?

1673

The Witness: There was an announcement to that effect at the time to the trade, yes, sir.

*By Mr. Bromley:*

Q. What you have just stated is backward, isn't it? A. Pardon me.

Q. What you have stated about your policy is just backward, isn't it? A. I don't quite know what you mean.

Q. You said your policy used to be to consider material as a whole and not parts of it. A. I don't quite follow you, Mr. Bromley.

1674

Q. Well, maybe I didn't follow you. Go ahead. A. Well, up until 1934 the New England Watch and Ward Society would review or examine a book or magazine and they would state their opinion whether or not the material contained therein was obscene, if the book contained only two sentences, the entire book was considered obscene. Whereas today it takes a more liberal point of view. That is, it does not consider the entire book or magazine obscene because it contains some questionable passages.

*Louis J. Crotteau—for Respondent—Recross*

Mr. Cargill: You have answered my question.

The Witness: Thank you.

1675

*By Mr. Hassell:*

Q. Referring to Respondent's Exhibits 18 and 19, I will refer to 18 first, which purports to carry some scenes of pictures of women from the Folies Bergere. Will you refer again to the November, 1943, issue of Esquire, page 61? A. Yes, sir.

Q. And look at this Respondent's Exhibit No. 18, and tell me where in that Exhibit 18 there is a description of the Folies Bergere as in Esquire comparable to this "Here are five perfectly good reasons why service men and mere civilians pause for laughter, libation, and libido at the Folies Bergere." A. You mean you want me to compare the text or the pictures?

1676

Q. Well, do you find anything in the text in the Life article of this sort that you find in Esquire, especially with reference to the libido? A. Oh, I don't think there is anything here so far that I have read, except probably that you could say this sentence here, "I love my wife but oh you kid loveliness." I mean a double entendre, or second inference could be applied there.

Q. That is the only thing comparable in the text that you find comparable to the matter I have read? A. Not knowing the definition of Callipygian, I can't say that there is any similarity.

1677

Q. Not knowing the definition of what? A. Callipygian. It is defined here as Callipygian beauties.

Q. Now, referring to Respondent's Exhibit 19, to the picture shown on page 21 thereof, did the New England Watch and Ward Society, through you, examine this issue of Life

*Louis J. Croteau—for Respondent—Recross.*

magazine? A. I remember having examined that magazine.  
1678 yes, sir.

Q. And did you pass that? A. Yes, sir, it was passed.

Q. The lower picture there? A. This one here, sir?

Q. In the right lower corner, shows poses of these ladies  
pictured entirely nude, doesn't it? A. I won't say that it  
does because it is very possible that they are wearing  
leotards.

Q. Well, suppose they are, can't you see the nipples on  
most of the breasts of these women? A. You can if they are  
wearing leotards. I might say, Mr. Hassell, that an arrest  
1679 was made in the Morris Casino in Boston and the girls were  
brought before a justice of the Municipal Court and the  
reason we lost the case was because they produced the leo-  
tards that they had on. Now the text of the statute states  
that they must be entirely lacking in any costume. I am the  
first to admit that the costume doesn't do a thing because  
it is absolutely transparent; it is practically cellophane and  
form-fitting.

Q. Now, this text of the statute was of the State of Mas-  
sachusetts? A. Yes, sir.

Q. You do not have reference to the Postal Obscenity  
Statute, do you? A. No, sir, I don't.

Q. Well, aside from that statute, would you consider  
1680 these pictures of Life obscene? A. I do consider them ob-  
scene in stage presentations, yes, sir.

Q. I mean in this magazine, do you consider those ob-  
scene? A. No, I don't.

Q. But they show the breasts and the nipples of the fe-  
males there? A. That is correct, sir.

Q. You think it is perfectly proper? A. Well, it is pre-  
sented every day in the burlesque house and so is this pic-  
ture.



*Louis J. Croteau—for Respondent—Recross.*

Q. Your Society would not object to a magazine carrying pictures of this sort of females with a very small triangular shaped cloth over the pubic area and nothing at all above the waist? A. That is correct, sir.

1681

Mr. Hassell: That is all.

Mr. Bromley: This copy that you have been referring to is of an issue of Life back in May, 1937. Now the Post Office never did anything about it, did it, Mr. Hassell?

Mr. Hassell: Oh, I can't tell you, Mr. Bromley. I don't want to make a statement to be a form of evidence. We have, from time to time, excluded from the mails issues of Life magazine. I think.

1682

Mr. Bromley: Well, if this one was excluded you will prove it, won't you?

Mr. Hassell: It is not incumbent upon me to prove anything about Life or to prove anything about Life magazine. Life magazine is not under consideration and I object to this whole line of testimony and have until I am almost hoarse.

Mr. Bromley: Well, I don't want to suggest even by inference to the Board that I have put into evidence a magazine which has been excluded from the mails because I did not intend to do so. It was my information that this magazine was never excluded by the Post Office Department and that it was mailed second-class in 1937. That was my point.

1683

Mr. Hassell: It may be possible that it was not excluded. As a matter of fact, we don't have the facilities for reading every piece of material that goes through the United States mails. It runs into the hundreds and thousands of tons of material every

*Louis J. Croteau—for Respondent—Redirect.*

1684

month. We don't have any such force as that. Occasionally material such as that gets by. That does not prove it is not obscene.

*Redirect Examination by Mr. Bromley:*

1685

Q. Now, directing your attention to Respondent's Exhibit 18, Mr. Croteau, to the pictures of the Folies Bergere girls. I want to ask you whether this text, in your opinion, is not the equivalent in moral implication to the use of the word "libido" in Esquire under this Folies Bergere picture, and I read from Life: "But notwithstanding such near-disasters, the Folies Bergere has managed to establish itself as unique in-at least one respect: its tall, leggy show girls are probably the best-looking, the highest paid and most gorgeously costumed in any night club anywhere.

"Located but one block from Billy Rose's Diamond Horseshoe, long recognized as the most dazzling showcase for I-love-my-wife-but-oh-you-kid loveliness, the Folies Bergere has succeeded in usurping that distinction."

Mr. Hassell: I object to the question, and submit that this witness is not qualified, from anything that I have heard, as an expert on the interpretation of the English language.

1686

Chairman Myers: Well, you asked the same corresponding question.

The objection is overruled.

The Witness: I would say that the implication was almost identical to what appears in Esquire.

Mr. Bromley: That is all.

Chairman Myers: Anything further?

Mr. Hassell: That is all.

(Witness excused.)

*Clements C. Fry—for Respondent—Direct.*

Chairman Myers: We will take a recess for ten minutes. 1687

(Whereupon, a short recess was taken.)

Chairman Myers: Proceed, gentlemen.

DR. CLEMENTS C. FRY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Bromley:*

1688

Q. Your name is what? A. Dr. Clements C. Fry.

Q. Clements C. Fry? A. That is right.

Q. And you live, Dr. Fry— A. 1253 Trumbull College, New Haven, Connecticut.

Q. Trumbull College is a part of Yale University, is it? A. Yes, it is.

Q. What is your profession? A. A doctor of medicine, and a psychiatrist.

Q. Now, will you tell the Board something about your educational background and the work that you have done?

A. Well, I have a B.S. degree, and also an M.D. from Northwestern. I was for two years resident at Boston Psychopathic Hospital after serving a very general internship at Louisville General Hospital. 1689

In 1926 I went to Yale University as psychiatrist to the University Health Service. Since that time I have been appointed as a lecturer in psychiatry with professorial rating, and my main work is with the student body at Yale and a few other colleges.

*Clements C. Fry—for Respondent—Direct.*

1690 I served as psychiatrist to Wesleyan University for five years from 1928 to about 1933.

At the present time I am in charge of the psychiatric division of the University Health Department at Yale University.

I have written, with Dr. Howard Haggard, one book called "The Anatomy of Personality" and I have just written a book, which has been published, "Mental Health in College" in collaboration with Dr. Edna Rostow.

This book is a survey of the ten years experience from 1926 to 1936, and views the types of problems that we see in the University Health Department.

1691 I am also psychiatric consultant at the New Haven Hospital and on the courtesy staff of Hartford Retreat and also trustee of Fairfield State Hospital.

Q. Have you had any work with college girls? A. Yes.

Q. Where? A. At New Haven. They have been private patients referred from Smith, Vassar and other colleges.

Q. So that your psychiatric experience has been very broad as far as college youth is concerned, is that right? A. It is.

Q. Are you doing any work for the government at the present time? A. I am.

1692 Q. What is that? A. A special piece of work for the National Research Council which is investigation of psychiatric problems in the armed forces.

Q. And in the course of that and other work, about how many detailed case histories are you familiar with, and have you studied? A. Well, in the last six months, working over this particular government problem, we have gone over about four thousand histories. I am familiar with many more. I suppose a couple more thousand at least.

Q. Have you ever had occasion in your professional ex-

*Clements C. Fry—for Respondent—Direct.*

perience or in your studies of case histories, to find therein referred to, as contributing in any degree to abnormalities or sexual problems or weaknesses of college youth, the magazine Esquire? A. I have not.

Q. What can you say generally your opinion is as to the effect of magazines generally upon sex problems of college age youth? A. Personally I don't feel they have any great effect upon college youth at all.

Q. Have you found them, in your experience, to be a factor of any importance at all contributing to sexual delinquencies? A. No. Of course, I might have to modify that in terms of what particular magazines you are referring to.

I don't know whether these photographic types of magazines—are they called magazines—these little booklets that are put out of photographs of various poses and positions in sex.

Q. Do you mean just photographs, pornographic practices? A. Yes.

Q. I have never seen them. I don't know what they are called. They are not what I comprehend within my question as magazines.

Doctor, have you examined the eleven issues of Esquire complained of in this proceeding? A. I have.

Q. And have you particularly examined the Varga girl drawings in the issues? A. I have.

Q. Based upon your experience are you able to express an opinion to the Board as to what effect this material would have, if any, upon college youths? A. I have.

Q. What is that opinion?

Mr. Hassell: I object. The same objection as before.

Chairman Myers: The same ruling. The objection is overruled.

*Clements C. Fry—for Respondent—Direct.*

1696

The Witness: In my opinion, I don't believe they have any effect upon youths: At least, with my cases. I have never seen any of these cases that have been affected by these particular pictures.

I think the abnormal boy, so-called abnormal boy—I had better say first that I don't only see abnormal boys, but I see normal boys, as well—I think some of the abnormal youngsters who are sex perverts—I wouldn't be surprised if they wouldn't use these pictures or any other pictures or anything as stimulation.

1697

They use religious pictures as sex stimulation, especially those boys who have a fetish. They may use a stocking or a hat or a dress or a shirt, or anything else to stimulate them, from that standpoint. But they already have in their minds the fact that they are going to be stimulated. The thing is not brought to them. They go looking for it.

Q. In your opinion, is there anything in these Varga girl drawings which would tend to corrupt the morals of college age youths? A. No, nothing.

Q. Or lower their standards of right and wrong toward sexual matters? A. No.

1698

Q. Or stimulate sexually impure thoughts? A. No. I might qualify that. I would like to know what you mean by "impure thoughts."

I think, as I said, a good many pictures will stimulate boys to a sex thought. Whether that is improper or not is according to your own definition of what impurity is.

I have seen boys who had these pictures in their rooms and would laugh about them and comment about them, but I don't believe they were necessarily impure thoughts.



*Clements C. Fry—for Respondent—Direct.*

They were comments, as they would comment or whistle at a girl's figure.

1699

Whether that is impure, or not, I don't know. I doubt it.

Q. Have you examined in these eleven issues the other pictorial matter like the Sultan cartoons? A. Yes.

Q. And the Eskey comic strips? A. Yes.

Q. And all the other cartoons and pictures? A. Yes.

Q. Is your opinion the same with respect to those pictures? A. I think pretty much. I think that in general they are a little more of a sex humor type of thing. I don't believe that they stimulate immoral thoughts, but I think it is common sex humor that the college youth has.

1700

He will comment on those things and make remarks usually in a rather humorous manner himself.

Q. Do you think the fact that he does that is morally disintegrating or morally detrimental to him? A. No.

Q. Do you think this kind of sex weakness expressed in this humorous vein is rather advantageous than otherwise?

A. If it is in the setting of the whole living and life. If it is a continuous thing all day long and a chronic affair, I would say that after all the boy was a little lopsided in his sense of values.

Q. Have you read the stories and articles like "Portrait Over the Fireplace" and "Many Wives Too Many" and the theatrical columns of Nathan, Seldes, and the other textual matter in these eleven issues of Esquire? A. I have.

1701

Q. Is your opinion the same with respect to them so far as obscenity and detrimental moral effect is concerned? A.

It is. As a matter of fact, those articles I thought, were very good, especially the one on burlesque. I don't think the one Pyknio girls was too good, it was all right, but scientifically it was fairly good.

Q. Are there burlesque presentations in the town of New Haven? A. There are not.

*Clements C. Fry—for Respondent—Cross.*

1702

Q. There are none? A. They usually go to Bridgeport.

Q. Are there burlesque shows in Bridgeport? A. There used to be. I don't know whether there are at the present time.

Q. Would you think the Paul Gallico article on burlesque if read by college youth, especially Yale men, would have any detrimental effect on them? A. I do not.

Mr. Bromley: That is all.

*Cross Examination by Mr. Hassell:*

1703

Q. How long have you been studying Esquire for this case, Doctor? A. How long?

Q. Yes. A. I think it was about a week or two ago, and I have been here since last Tuesday night and I have been reading it as I was sitting over in my hotel room, all the time. I have read a great many stories other than the ones he inquired about.

Q. You read all the material and looked at all the material especially pointed out in these eleven issues? A. Yes.

1704

Q. How much time, all told, have you spent in examining this material and studying it? A. Well, I can tell you. I have been in my room most of the time since Tuesday, especially in the last couple days, waiting to be called and most of that time has been spent looking over these magazines. I have gone over each separate article about three times.

Q. Are you ordinarily a subscriber or reader of Esquire? A. I am not.

Q. Have you read the magazine as thoroughly before? A. In the past, years ago, I read it.

Q. How many years ago? A. About five or six.

*Clements C. Fry—for Respondent—Cross.*

Q. You were a subscriber to it then? A. No.

Q. You saw it occasionally? A. Yes.

Q. What is your daily fee for testifying in a case of this sort, Doctor? A. Do I have to answer that?

Chairman Myers: Oh, I expect this is a pertinent question bearing upon the case.

The Witness: It is?

Chairman Myers: Yes.

The Witness: I don't know what it is going to be, to tell you the truth.

*By Mr. Hassell:*

Q. What arrangements have you with the publishers of Esquire as to your being paid to testify? A. No arrangement.

Q. No arrangement? A. No. They asked me how much I would charge them, and I told them I would wait until I got through.

Q. So they agreed to pay you anything you charged? A. No, they didn't say a word about that.

Q. So the arrangement with you is that you are to be paid anything you ask for substantially? A. I don't believe so.

Q. What are your usual charges for testifying? A. I have never testified before in my life. This is the first time I have ever been in court so I don't know what the fees are.

Q. I am wondering whether your fee would be comparable to that of Dr. Tillotson. Do you know him? A. I know him, yes.

Q. He said his ordinary fee was five hundred dollars. A. Well, I'm glad to know that.

*Clements C. Fry—for Respondent—Cross.*

1708

Chairman Myers: Don't forget, Doctor, you are just as good as he is.

*By Mr. Hassell:*

Q. How many days did you spend on this before you came down here, Doctor? A. Well, I don't think I spent many days. I got the magazines on Saturday and I spent most of Sunday afternoon and part of Sunday evening reading them before I came down here.

1709

Q. You are going to include that time in your bill for your services? A. I will have to ask Dr. Tillotson. I wouldn't ordinarily do it.

Q. Now you stated that you had, in the last six months, examined case histories, as I understand you— A. Yes, sir.

Q. —of about four hundred cases? A. Four thousand.

Q. Four thousand. I beg your pardon. Four thousand cases. A. Yes, sir.

Q. Did you interview everyone of these individuals? A. Not every one of them, no.

Q. How many out of the four thousand? A. About two-thirds.

Q. Two-thirds? A. Yes. I have also in that six months period seen about two hundred students.

1710

Q. You took the case histories of about two-thirds of this four thousand? A. That is right.

Q. In the last six months? A. That is right.

Q. How long did you spend with each? A. With each history?

Q. Yes. A. I can't tell you exactly. I did it in two ways: first, I have an assistant, this Mrs. Rostow that I referred to, who has abstracted these histories under my direction, a great many of them. Some of these histories I have only

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gone over the abstracts, others I have gone over myself. It usually takes you about half an hour, forty-five minutes, something like that, fifteen minutes, according to the history.

Q. Fifteen minutes, half an hour, or forty-five minutes for each history? A. That is right.

Mr. Bromley: Are you sure you are talking about the same thing? He is asking you, Doctor, how long it took you to take the history, not to read it.

The Witness: Take the history?

*By Mr. Hassell:*

Q. Yes. A. Oh, that is a different thing. Some of these histories are one interview, a great many of three or four or five, some of them go on for a year and even more for a longer period. Some of these patients we have seen over a period of four years, especially the more difficult type of case. There is no history that the boy has not been given a full hour. It has usually taken an hour at least to get a history of his problem, his background, and so forth.

Now, in doing this, I must say we have a form which we have him fill out, which has to do with the age of his father and his mother and their backgrounds and their educational standpoint, and the standpoint of nervousness, and so on, the marital situation, where they live, whether it is a rural or small town, or whatever it is, a city; so this form that we have gives us our technical material, which is a time-saver for us. Then the intimate history, that is, the problem that the boy comes to see you about, which may be nervousness or may be a sex problem, or it may be almost anything. Then we confine ourselves to that and try to build from there, allowing the patient to tell his own story and

*Clements C. Fry—for Respondent—Cross.*

1714

see what comes of it, and then question him from that standpoint, whatever we find.

Q. Now these four thousand patients you refer to as having gone into case histories of during the past six months, were they cases of abnormalities? A. No.

Q. Or diseased condition? A. No. I can tell you a little bit about this. Perhaps I had better explain what they are.

1715

The National Research Counsel came to me and asked me to try to outline and study the question of psychiatric problems in the armed forces. This investigation was endorsed by the Surgeon-General of the Army, the Surgeon-General of the Air Forces, and the Surgeon-General of the Navy. The idea being to find out, not how poorly do these boys do in the armed forces, but how well they do. That means getting a cross section. We feel that our patients are more or less a cross section at Yale University.

The book that I wrote had about 1257 cases. We classified as abnormal 105. They were what we call the sex cases. The rest of them were what we considered of the minor nervous disorders or some personal problem.

1716

To get into it a little more fully for you, about 21 percent of our patients, freshmen, freshmen that we have seen, come to see us with sex as a particular presenting problem. That might mean that masturbation might be the problem, or it might be heavy petting, which is a very common thing, which gets them upset and rather nervous, or it might be a question of an attempt at intercourse, or it might be intercourse, or anything along that line.

As I say, 21 percent of the freshmen come to see us with that as a presenting problem.

About 35 percent of the sophomores, 35 percent of the juniors, and 35 percent of the seniors come to us presenting their particular problem in terms of sex.



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About 55 percent of the graduate students come to us with that as a basis. 1717

Now, about one-third of our cases are graduate students. As they get older it seems that they come to the psychiatrist with sex as a presenting problem a little more often than when they are freshmen. In the freshman year it is usually more of a question of family relations or scholarship difficulties or social difficulties that they are troubled with.

Q. Each one of these four thousand cases came to you voluntarily? A. Not necessarily. They are either sent to me by the deans of the various schools, or they are sent to me by the counsellors or through other physicians in the University Health Department. A boy may come to the Health Department complaining of insomnia or a stomach ache or indigestion or diarrhea or anything else, and after the physician has examined him and he feels that it is an emotional problem, then he usually presents that case to me, but 40 percent come on their own. 1718

Q. Is there any difference then in the willingness and freedom of the patient in answering the questions whether he was sent to you involuntarily, or whether he came to you voluntarily? A. Not a great deal, no. I think I can honestly say that if he is coerced, if he is sent by some person who says to him "Something is wrong with you, you are nuts, you better go over to see the psychiatrist and be psycho-analyzed" then we spend a little more time with him because he comes to us with a chip on his shoulder; or if it is a case of sex peepers, or a case of feeling— 1719

Q. Sex peeping? A. Sex peeping.

Q. What do you mean by that? A. Well, that is the so-called peepers. Once in a while you get a kid who goes around peeping in windows and so on who is picked up by the police.

*Clements C. Fry—for Respondent—Cross.*

1720

Q. How many of these 4,000 that you examined in the last six months did you ask the specific question whether they read Esquire? A. I will tell you what I did.

On the question of sex we have an outline in which we try to get their total sex history. We start out this way: We ask the boy how he was introduced to sex, when he first ran into the question of sex, who introduced it to him, how did it come about, was it through another boy, was it something in his own thoughts, or how did he come to be confronted with this situation at the particular time.

1721

We then ask him if he ever had intercourse, we ask him about masturbation, and in masturbation we ask what stimulates him, what are the various factors that seem to stimulate the boy towards this act.

If it is a question of intercourse, we go into some detail about it: Is it a prostitute, is it a so-called nice girl, do you know the girl, are you in love, how did you happen to do this, how did you happen to feel that you had to have sex relations.

If it is a question of petting, again we go into some detail about how that boy happened to take this on.

1722

One of the main things we find is that a great many of the boys who get into sex difficulties start quite early in their careers, and they are usually introduced to it by other boys through mutual masturbation or being told about it or something of that nature.

In a few cases—we had a course, French 41. When I first went to Yale that was the course that seemed to stimulate a great many boys. It was a French literature type of thing, and many boys would be bothered by the fact that they were aroused by this particular type of literature, and they would be very ashamed about it in some cases, or they would be worried about it, and they would think there

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was something wrong, and they would come to see us, or some friend would send them to us.

1723

I might say this, in addition: Most people feel that a psychiatrist, of course, believes in freedom of sex. As a matter of fact, we do not. We don't feel that a fellow should have that type of freedom and do as he pleases. We don't encourage them.

I might say we rarely ever advise as to what these boys should do. We present to them the fact of what is the function of sex, and, personally, I feel that in presenting it in that way they seem to get a little more out of it than if we tried to scare them or tried to coerce them or what not.

1724

In general, the psychiatrist, I believe—or at least I, believe there is a function to sex. The first function is the creation of children, a biological function.

The second function is in answering the sort of urge that seems to be in the body.

The third is a question of pleasure, and the fourth is the consummation of love between man and woman.

That is the usual line we take with the youngsters, saying: "This is a sociological as well as a biological problem."

We don't advise what they should or should not do. We discuss the thing from various angles.

I might say that we don't take up the religious angle of the problem. In certain cases where the boy is religious, if there happens to be a pastor around that we have faith in, we might send him to him. In the past I have sent a great many cases to Father Riggs, who used to be the Catholic chaplain, or Mr. Lovett, the Episcopalian chaplain. We worked in cooperation with those people.

1725

Q. Doctor, these boys are influenced in their special urge or sex life, by things that they read. They are at times in-

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1726      fluenced by pictures they see? A. At times, they are influenced; yes, sir.

Q. Would you say they would be affected by beautiful near-nude pictures? A. Some boys would, yes.

Q. These boys that you are talking about now in this 4,000, are they regarded as normal? A. I wrote a book called "Mental Health in College", and in the introduction of that I discussed that problem, stating that most of our patients are regarded by their friends as normal people, and that the psychiatrist regards them as fairly normal, too.

1727      Q. As fairly normal? A. Yes, that is the statement I made.

Now, it is according to how you want to interpret that. I feel stronger than that, and I state in a chapter that it is pretty much a cross section of the university that we treat. We see the Phi Beta Kappa and the rather stupid boy, the rich boy and the poor boy, and the athlete—I have seen captains of Yale—and we see the non-athletes.

We see the very brilliant fellow and the stupid fellow. It is pretty much a cross section of the University.

1728      I might say in addition to that that I have also acted as physician to the crew on various occasions, and have gone up and lived with about 150 youngsters that are up there, and I have become pretty well acquainted with them.

I have been a member of various fraternities at Yale and I talk a great deal about sex to them. They always want to hear about it. In general, I think they have got a pretty good straight-forward attitude toward sex. Whenever I have talked to any group on sex they have been rather serious, asked good questions, and discussed it in a pretty straight-forward manner.

Q. Doctor, would you, from your contact or knowledge of boys at Yale for a good many years, say that in their at-

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titute towards sex, their education on sexual matters, their reaction to various things in a sexual way, it is a pretty fair average of the whole United States, everybody in it? A. I should think so.

1729

Q. What is the basis of your comparison? A. Other college youngsters of that particular group. I would say perhaps I would have to modify my answer and say that in terms of college youth—I know college youth, not only Yale youth—but I have seen Princeton men and Harvard men and men from small colleges.

Q. You have in mind college men. Aren't they a little bit above the average of the common run of youngsters? A. Not in the question of their drives and desires and wishes. They are just human beings from that standpoint. They may be a little more intelligent.

1730

Q. And a little better educated as to sex? A. No, they are very ignorant as to sex.

Q. They are very ignorant as to sex? A. One reason is that their families never tell them anything, they don't know how to tell them.

Q. Do you advocate sex instruction in the home? A. I do, very strongly. I don't believe in calling the boy in when he is 18 or 19 years of age and suddenly saying to him: "Now, son, it is about time I told you of the dangers of life."

1731

I think sex should be a part and parcel of life in terms of education of that child. There should not be any over-emphasis on it.

A great many people feel they are educating the child in sex if they run around in the nude and have the children run around nude. That might arouse a little curiosity, if nothing else, if in the rest of their life they paid no attention to the child.



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1732

Q. Is that the procedure you follow with your children, Doctor? A. I have no children.

Q. You have none? A. No.

Q. Your contacts with boys and girls have been almost entirely with college boys and girls? A. Almost entirely. I have done some work in the dispensary at the New Haven Hospital, and also at the Boston Psychopathic Hospital.

Q. You have seen some of these Varga girl pictures, you say, in the boys' rooms at Yale, I believe? A. Yes.

1733

Q. And they would laughingly refer to them? A. Not always. I mean, it just seemed to be a part of the whole set-up. I don't think they paid any great attention to them after they put them up, any more than we pay attention to a great many pictures that we have in our rooms.

What they have done when I am not there, I couldn't tell you.

Q. I was coming to that. You wouldn't testify here, as a matter of fact, that they don't make any improper use of those pictures? A. I couldn't say that, no.

Q. Doctor, I guess you are not very well pleased at the prospect, but we will have to, by reason of the broad answers you made to the questions on direct, go through all of this matter in all of these issues.

1734

Mr. Bromley: You don't have to as far as I am concerned, Mr. Hassell.

*By Mr. Hassell:*

Q. Doctor, will you refer to the matter appearing on page 6 of the ~~January~~ January, 1943, issue of Esquire? That is boxed in under the heading of "Shor Nuff".

I call your attention to the character—



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Chairman Myers: We have been talking about this. If it will help some, the Board is willing to sit late tonight to get through with Dr. Fry today. However, a preacher once said there was no soul saved after the first twenty minutes, and I agree with him strongly.

1747

Mr. Hassell: I am in this position, Mr. Chairman. Of course, all this matter has been introduced here over my objection. It is all in the nature of a surprise to me.

Chairman Myers: This was introduced by you, not over your objection.

1748

Mr. Hassell: I am talking about this so-called opinion testimony that I have objected to and consider irrelevant to the matters here involved.

Chairman Myers: We don't.

Mr. Hassell: I am glad to have the Chairman's statement on that. But I want to say in my own defense that I am taken by surprise, and I think it is only fair to me not to crowd me in presenting the testimony in this case. I protest and object to going on beyond five o'clock.

Chairman Myers: If you want to go on and bring the Doctor back on Monday that is all right with us. But I was trying to say if you could get through we would sit later tonight in order to help you get through.

1749

Mr. Hassell: I understand, Mr. Chairman, but I don't see any prospect of getting through with it by five o'clock.

Mr. Bromley: Speed it up a little and you might get through.

Mr. Hassell: I appreciate counsel's desire to speed it up by my not making any reference to it.

*Clements C. Fry—for Respondent—Cross.**By Mr. Hassell:*

1738 Q. Coming to the first paragraph of this matter boxed in on page 6. There is a characterization, you will note, Doctor, of the spicy cartoons in Esquire. It says:

"Esquire, the four-bit magazine, which is always busy as a little beaver sandwiching good advice between its spicy cartoons"—do you agree with that general description of Esquire, from what you know about it? A. Spicy?

Q. Yes. A. Well, it is according to how you define spicy. In general, I guess, yes.

1739 Q. Sexy? A. Not sexy. Again, I would say "spicy" might be a good word, yes.

Q. Spicy, not referring to sexy? A. That is right.

Q. In other words, you would define spicy as something entertaining, something pleasant? A. Yes, it might refer to sex sometimes, too.

Q. Sometimes? A. Yes.

Q. This matter that you saw and read practically all refers to sex? A. Yes, this here (indicating).

Q. I mean the eleven issues here; in the eleven issues. A. No, I don't know whether it is all referred to that way, to sex. I mean, if you are using sex in the very broad sense I am with you, but if you are using it in a very narrow sense, I am not.

1740 Q. Now, how would you use sex in a very narrow sense and how would you use sex in a very broad sense? A. Well, whether it is not a very nice thing, or whether it is part of the drive within one and so forth.

Q. Is that the broad or the narrow sense? A. I think that is the narrow sense.

Q. What is the broad sense? A. Well, it is just part of the whole life picture and we know that these things exist

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in the outside world and these are in our problems that we have to meet and these situations that we are up against, and so forth. 1741

Q. You mean these matters here in Esquire are certain problems that you have to meet? A. Not matters in Esquire, no, not necessarily.

Q. In this last paragraph of this article under "Shor Nuff", there is this: "Comes it then breeding (no, not that)". A. The what?

Q. "Comes it breeding." A. Oh, I see. "Comes it then breeding".

Q. Yes. "Comes it then breeding (no, not that)". What does that mean, Doctor, as referring to "no, not that", what does that have reference to? A. Well, I should say—I don't know exactly—but I infer that is just a little addition in there; that we can't refer to breeding in this magazine or anywhere else, that it is a taboo subject to talk about. Nice people wouldn't like it, so we put this in a little parenthesis. 1742

Q. You mean the "no, not that"? A. Yes.

Q. Reference to what kind of breeding that is not usually spoken of? A. In polite society.

Q. Now, at the top of the next column I will read the whole paragraph:

"The pay-off on what kind of a guy this Woodhead is comes quick. He figures a gal's dancing ability is worth 20 points. Sex he gives 10. So he'd rather dance." 1743

The pay-off on what kind of a fellow Woodhead is? Would you gather from that that Woodhead was a wood head as to sex matters? A. Well, he puts more emphasis on dancing, quite a little bit more than on sex.

Q. So that Woodhead is a sort of a dead issue? A. No, he puts more value on dancing.

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1744

Q. He would rather dance? A. He would rather dance. Other people like sex.

Q. Now, down at the bottom of that column, the number 7, juking. A. Yes.

Q. "a. That's right. Just what you're thinking about". What do you think that has reference to? A. That is sex.

Q. That is sex? A. Yes.

1745

Q. You say there is nothing in this article of an indecent character about that? A. I wouldn't say it was indecent. I think it just happens to be someone's opinion of the importance of sex. Now, whether it is the sex act, or whether it is sex in general, I am not sure. I think it refers to the sex act. Whether it refers to intercourse or whether it refers to petting or excitement of the whole thing, I don't know, but sex in general is what they are talking about, and he is putting 400 as a value on it.

Q. Now, taking this article as a whole where these things are pointed out, do you think there is anything in it of a lewd, lascivious or obscene nature? A. No.

Q. As referring to a man's magazine? A. Man's or woman's magazine.

1746

Q. Do you know the reputation of Esquire among the boys and girls as being somewhat risque? A. I don't believe so. No, I don't think so.

Q. You never heard it had that reputation? A. No. I don't think they go out to buy it to be stimulated as far as I know.

Q. Now, Doctor, I call your attention to the matter appearing on page 45 of this January issue: "Benedicts Awake!", the first part of the first verse and the first two lines of the last verse.

The first verse reading:

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"Men sleeping besides your wives, Awake!  
Awake to gaze longingly, lastingly  
Upon soft skinned thigh and softer breast  
Revealed by careless gown."

Do you think that is suggestive? A. Yes, it is.

Q. Suggestive? A. Yes.

Q. Suggestive of sex matters and sex contacts? A. Oh, I suppose so, or love in general.

Q. But you say that it is not indecent, lewd, or lascivious? A. I wouldn't think so, no.

Q. That is a perfectly proper subject discussed in the pages of a man's magazine? A. Yes, I think it is all right.

Q. And you say the same— A. I have been through too many poems like it all the way through, for my own personal opinion. I would get a little tired of it.

Q. But you don't think such sentiments as that of such verse or such pictures conjured up by these words are calculated to have any deleterious effect? A. No, I don't.

Q. On impressionable young men? A. No, I don't. As a matter of fact, you know it is a very funny thing. At some stage it might help them a little bit. That may seem an odd statement, but some boys might be better off stimulated by the female body than the male?

Q. You mean the perverts? A. Yes.

Q. They are very rare, aren't they? A. No.

Q. I am talking about the population as a whole. A. As a whole, yes.

Q. Are they rare taking the student body of Yale as a whole? A. Well, it is according to how you define Yale. It is rare; you see them now and then.

Q. Now, the material appearing on page 83, "Star and Garter Blues", the article by Gilbert Seldes.

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1750

Doctor, did you see that show in New York? A. No, I didn't see it. I didn't see this show.

Q. So, in your examination of this article you did not have the benefit of anything that you might have gotten from seeing this show.

Now, you read this article? A. Yes, I did.

Q. This is one you read three times? A. Yes.

1751

Q. In the first column in the first paragraph, down in the second sentence: "The scene is the old familiar burlesque routine of the court room; Clark is presiding, as an owl should; and merely as an incident Gypsy Rose Lee is the defendant against whose navel Clark finally blows a paper tickler."

Is that an entirely decent subject of conversation to write about? A. It is describing what went on in that show, I suppose.

Q. Now, going down to the next paragraph beyond the middle of the photograph: "For the past few years he has leaped into the air, clicked his heels sideways (how?) and sung of himself as "Robert the Roue from Reading, P-a," weaving and winding his frame around tall show girls, peering through his non-existent glasses into the bosoms he isn't tall enough to see unless he jumps."

1752

Do you think there is nothing indecent in that phrase? A. Well, if you pick it out that way it is a different thing to me. In terms of the whole article, I thought it was a very good description of the play. He wasn't endorsing the play to my mind; if anything, he was panning it.

\* Q. Now, over in the center of the third paragraph of this article on this page. A. In the center?

Q. In the center of the third column, the seventh paragraph. A. The third sentence?

Q. Yes. "There is also a character from the night clubs



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who makes her breasts jiggle, and this is considered funny, but I don't think so even at the night clubs where her frankness was greater, her skill no more engaging. A stripper who does an orgiastic dance verges on the erotic."

1753

Would that last phrase convey to you anything, or what would that last phrase convey to you as to occurrences or happenings in this show? A. Well, I should think it is self-evident that it is a question of a fellow describing a very erotic dance. He states what the stripper does, and he does not approve of it.

Q. You say that it is entirely proper and not indecent to describe or advertise any review as an erotic dance? A. In detail?

1754

Q. As described here. A. As described here I would say it is perfectly all right.

Q. But a boy reading this might say: "Well now, there is my chance to see something hot", mightn't he? A. There is a possibility of that, yes.

Q. "A stripper who does an orgiastic dance." A. Most of the boys that I have been familiar with know about it, anyway. I don't think this would bother them very much. They know what it is.

Q. They have already seen the show? A. They have seen the show. Perhaps they have.

1755

Q. Do you believe, then, that this would have no effect on the fellows you are associated with? A. Well now, it is according to how you—if you want to get a magnifying glass and look at that as the only thing, why perhaps it would have some effect, but when you take this whole thing as an article it is a very good description and a very good criticism, to my mind, and I think it would be to the average college student, of this show. If he read this article, I would doubt that he would go to see the show. As a matter

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1756 of fact, some of them would be disgusted with it. Others would say it wasn't spicy enough, perhaps.

Q. Now, beginning at page 97, we have the Varga girl calendar. This first one on that page is for January. You find nothing indecent in the scantiness of that lady's costume? A. No, I don't. It is like any beach. You go on any beach and you find the same thing.

Q. Now, on page 98, February. The model with the magazine, "Dreamland" draped partly over her buttocks and practically with no clothes on. Would you say that that would be calculated to excite impressionable youth? A. Not necessarily.

1757

Q. There wouldn't be anything lewd, lascivious— A. No.

Q. (Continuing): —indecent in this? A. No.

Q. Would you have any different opinion if she had no pretense of any covering on? A. It is according to where the emphasis was and it is according to where this was, if it was hung in a museum, or whether it was well done or what not; whether the emphasis was put on certain features, and what not.

Q. Now, the March— A. I might say not features, I would say position more than anything else.

1758

Q. Whether she is reclining? A. No. If she was a little more suggestive of the sex intercourse, or something to that effect.

Q. Now, the March Varga girl. Do you find anything objectionable in that? A. I do not; no, I don't.

Q. Now, would you say that the size of the thighs, Doctor, are a little over-emphasized here? A. I don't know. I don't think so. I don't believe so. I don't think that would make very much difference because some men like big thighs and some like little thighs and so on, and the Turks like the big fat ones, and so on.

*Clements C. Fry—for Respondent—Cross.*

Q. The feminine curve, the curves of a woman's body, are calculated to excite sexual desires in the opposite sex? A. Not necessarily. It might excite a sense of beauty or admiration as well as sex.

1759

Q. What do you say with respect to out and out plain nudes, Doctor, would you say that that would be more or less exciting than models scantily covered for the purpose of stimulating by partial concealment? A. I don't know what to say about that, to tell you the truth. I don't know.

Q. I see. A. It is according, again, what the position is. There would be a lot of factors to my mind that would enter into a situation; if you had a nude in a museum it might be one thing, and if you had a nude in a saloon it might be another thing. It is according to how you want to use this thing. It is according to yourself or your view of it.

1760

Q. Well, coming closer down to cases. Suppose someone paid 50 cents for a magazine to look at these near-nudes dealing with that person, do you think that enticement in a sexual way is enhanced by partial concealment of the female body? A. It is according to the individual, I would say. In the old Victorian days, if they showed their ankle, it was considered rather indecent. Now, the boys on the beach and the girls are very scantily clad and they pay very little attention to it.

Q. Then, if all of us practiced nudism, why we wouldn't be interested in sex any more, would we? A. I wouldn't say that at all. A great many people might become more interested in it, and maybe some in a constructive way and some in a destructive way and for some people it might be bad for them. I mean to suddenly take a group of young people who have been brought up rather strict, in maybe a good home, and suddenly say: "Now, you have to go to a nudist's colony and appear in the nude." I think it would

1761

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1762 be quite a shock, and certainly girls no more so than the fellows. I think they would blush a little more than the girls might.

Q. Now, just where do you draw the line, that is, between nudity and partial nudity, Doctor? A. I draw it for the individual who is looking at it.

Q. What parts of the body? I am talking about the female now. We are talking about these figures. A. Yes.

1763 Q. What part would you want covered up to make them less erotic? A. Well, it would not make much difference to me, professionally speaking. I don't believe that most boys would be abnormally stimulated by a good-looking limb. I don't think they are necessarily stimulated by a so-called good looking bosom, or what not. It again varies with those fellows. I wouldn't know what to cover up.

Q. You referred to boys brought up in decent, Christian—I assume—homes. A. Some; yes.

1764 Q. Do you think this type of picture we are looking at now, throughout this January issue, this Varga girl, would be the type of picture you usually find in the ordinary, average American home? A. I have seen them in a lot of good homes, what I consider good homes. After all, we have to consider how the family approaches these things with the youngster. If they over-emphasize the dirt of sex and that sex is always impure or what not, and that to see a woman's bosom is just a terrible thing, but to see her leg or to look at pictures or what not and consider them merely from the sex standpoint, that might be a little different thing, but if you have a good healthy outlook on the matter, I don't see where it stimulates them.

Q. Have you found, Doctor, in the homes you visit, that the female members of the family are ordinarily usually pictured in display pictures of this sort, hung up on the

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wall for the edification of the family and visitors? A. Some have Troy Kenny pictures of dancers.

1765

Q. I am talking of members of their own families. How would a boy like to see his own sister or his own mother pictured like this? What effect would that have on him?

A. I have never seen it but one time. I know a woman who has been a model for Troy Kenny's pictures, and she had it in her home and the boy knew it.

Q. That is a rare case? A. A rare case.

Q. The only one you know of? A. The only one I have ever had.

Q. So, ordinarily, a boy in his own home does not see pictures of this sort, his mother in this type of bathing suit?

1766

A. He has seen his mother in this type of bathing suit, the 16 year old youngster who goes to the beach with his mother.

Q. Which bathing suit, which month? A. I would say about May.

Q. Now, if that is a bathing suit and that verse reads—  
A. Not when I made that remark.

Q. —

"May's a balmy sort of month  
That makes me apprehensive,  
A lot of fellows get the urge  
To start their Spring Offensive."

1767

What do you think that refers to, a spring offensive in a sexual way? A. It may be. It is according to how you define sex. For instance, the American girl likes to be admired and sought after and that may be a spring offensive, too.



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1768

Q. Doctor, let's don't get away from this May bathing suit costume that you picked out here. A. I said I have seen women in that type of thing and others have seen them in the same thing, and I stick to that.

Q. You would call that an ordinary, usual and customary bathing costume for women on the Connecticut beaches?

A. I have seen almost similar.

Q. Cut down as low as that, Doctor? A. Pretty nearly. I can't see the back part so much.

Q. There is nothing holding this costume on the front, is there? A. That is right, there usually is something.

1769

Q. That would probably be ineffective in bathing. She wouldn't have it on very long after the waves hit her? A. That's true.

Mr. Bromley: You can't see around the neck, Mr. Hassell. You can't see around the neck whether there is a string around there or not.

Mr. Hassell: The Doctor agrees with me that it is an ineffective bathing costume.

Mr. Bromley: He is just as wrong as you are, then.

*By Mr. Hassell:*

1770

Q. I believe you stated you find nothing objectionable about the pose? A. No.

Q. Or the costume or lack of clothing coupled with the verse in the May picture? A. No.

Q. And nothing in the April picture? A. No.

Q. Nothing in the June picture? A. No.

Q. And that picture, that model, evidently has on no brassiere. Do you note that, Doctor? A. She has not, but the artist is taking a little precaution, I guess, about that with her arm and the flowers.



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Q. You wouldn't call that a bathing costume, would you, Doctor? A. No, I would not.

1771

Q. The grass or whatever she has around her waist would not withstand the waves very long? A. No, but I don't know what she has under.

Q. And the July picture and verse:

"July is a patriotic month  
And you will agree—  
Whoever dreamed this suit up  
Took a lot of liberty!"

Would you say that is a daring costume? A. It is daring, yes.

1772

Q. But not indecent? A. Not indecent.

Q. Now, coming to the August picture, would you say that this model is reclining on her back? A. I should think so, yes, as far as I can judge.

Q. And would you say that the clothing draped around a part of her body is very sheer? It doesn't conceal very much, does it? A. Her bosoms are there—her nipples don't show—the pubic hairs are not showing. It is concealing quite a little, I guess.

Q. Can you see the umbilicus? A. No, I can't.

Q. Now, the verse there in the August number:

1773

"I find a cool secluded beach  
A perfect August shelter,  
But all the men who pass my way  
Just look at me . . . and swelter!"

Do you associate that with the August weather, wherever this young lady may be, or a rise in blood pressure of the men who look at her? A. Both. I don't think that is an improper thing, though. Men do it.

*Clements C. Fry—for Respondent—Cross.*

1774

Q. You think it would be perfectly natural for a young man to get a rise in blood pressure from contemplating these pictures? A. Most of these fellows don't get very much a rise in blood pressure, unless you are using that sort of symbolically.

Q. So, the sweltering part there is sort of an over-advertisement of the effect of this picture? A. I have never seen any youngsters get excited about these pictures.

Q. They don't tell you they get excited about them, anyway? A. As I said, I have examined a lot of them.

1775

Q. They don't tell you everything, do they? A. They tell me almost everything. They tell me more than they tell their fathers and mothers.

Q. But, can you testify that they actually tell you everything? A. No, certainly not, but I can testify they tell me more than they tell their mothers and fathers, and the deans of the colleges.

Q. How do you know what they tell their fathers and mothers? A. Because I have seen a lot of the fathers and mothers in consultation.

Q. And they have testified that the kid has told you more than he has told them? A. In certain cases, yes.

1776

Q. So your information there is entirely hearsay, isn't it? A. Well, yes.

Q. It depends on the veracity and the mood of the father and mother? A. And the trouble the fellow is in.

Q. And how much they want to reflect on the habits and thoughts of their progeny, doesn't it? A. Will you state that again?

Q. I say, it depends entirely on the mood of the fathers and mothers and how much they want to reflect on the habits and thoughts of— A. Not if they are sincere people who want to help their youngsters. I think if you had a youngster

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who had a physical illness and you went to the doctor, you would tell him everything you could about it, and give him all the information so that he could make a diagnosis. It is the same thing in terms of these emotional things. If the parents have the child's interests at heart, I think they will be pretty straight-forward and frank.

1777

Q. Now, Doctor, don't you know it to be a common failing of the lay person, and I am speaking of a non-physician, not to give emphasis to a lot of things, not to remember a lot of things that possibly they should remember? A. That's so, but we ask them questions.

Q. So, the information that you have obtained has in measure depended upon the accuracy of that information?

1778

A. Not wholly.

Q. If a matter depended upon the intelligence and ability to remember on the part of the person who is telling you—in this instance the parents. Is that right? A. To a certain extent, and we then ask them questions and find out more. I might say in addition to that, that in the past—not in all cases—we have the information sometimes from their friends, and information from social workers that we send out to get that particular information. We have also certain psychological tests that we use.

Q. Now, Doctor, couldn't a boy, the ordinary, average, normal boy, get libidinous thoughts from viewing these pictures of these Varga girls, and the other matters in Esquire, without being a problem boy? A. That I can't tell, because I have not seen those fellows.

1779

Q. I see. I say, couldn't that happen? A. I don't know. I can say this: If you will allow me to I will say this: They get stimulation from a lot of things. They get stimulation from the Bible. Some boys go to the Bible and pick out things. Some boys definitely pick out dirty passages in Shakespeare.

*Clements C. Fry—for Respondent—Cross.*

1780

Q. I am not talking about the exceptional boy. I am talking about the average, ordinary boy. Isn't it a fact that it has been said by authorities that 99 men out of 100 have at some time in their lives masturbated and the other one is a liar? A. That is right, some people say that.

Q. And if it has been testified here that 90 per cent or more of the men have masturbated, would you accept that?

A. I don't know. I would put it about 85 or somewhere near. Those are figures that have been handed down for generations and every doctor has kept repeating those figures to their patients year after year, and no one has ever gone out to find out about it.

1781

There was a study made at one of the girls' colleges which showed the girls were as bad as the men in regard to sex, but, unfortunately, I know of no good statistics on the question of the percentage of people who have at some time in their lives masturbated.

Q. So if that is a fact, you would not be able to testify positively, as a matter of fact, that this August Varga girl would not stimulate such activities on the part of the average boy? A. That it wouldn't?

Q. Yes. A. No, I couldn't testify that it wouldn't any more than I could testify that the Bible would not stimulate him.

1782

Q. I see. Now, note the September Varga girl and the verse:

"September brings us cooler days

But still I have to pose on,

Oh, Mr. Varga, hurry up

And let me put some clothes on!"

The verse there, Doctor, is manifestly designed to point to and call attention to the lack of clothing on the part of

*Clements C. Fry—for Respondent—Cross.*

this model, isn't it? Wouldn't you get that idea? A. Yes, I think I would.

1783

Q. Now, this clothing painted on the upper part of this model's body—and, by the way, she is in a reclining pose with one leg cocked up, isn't she—this clothing reveals her body very effectively, doesn't it? I mean, it doesn't conceal very much. A. No more than the average woman's clothes that you see these days, I suppose.

Q. The average woman's clothes? A. Evening gowns or what not.

Q. Doctor, have you ever seen an evening gown like that? A. Pretty nearly.

1784

Q. Without any skirts on at all? A. Oh, you are talking about the upper part?

Q. I am talking about all this picture we see here. A. I misinterpreted that.

Q. You have never seen an evening gown at all like that? A. Oh, just add the skirt—

Q. And you have not seen an evening gown fitting over the pubic area, the mons, as closely as this? A. If that is the mons, it is pretty high up; it is bad anatomy.

Q. The dark shadowed area adjacent to the upraised thigh? A. I see what you mean.

Q. That would be the mons, wouldn't it? A. Yes.

1785

Q. And it is shadowed dark as though it might be showing what appears underneath? A. Yes.

Q. And you would say that this picture would not be calculated to especially stimulate the average normal boy that you know? A. No, not the average normal boy.

Q. You would say there is nothing lewd, lascivious, or indecent about this pose? A. I don't believe so, no.

Q. And with respect to those two pictures, August and September, do you think a boy would contemplate his sister



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1786

or his mother in such costumes as those? A. I don't know. I don't know whether that is very important or not.

Q. In other words, the females he has been raised with in his own household, never practiced the wearing of such diaphanous or revealing garments. I am talking about the average boy, Doctor. Isn't that a fact? A. He has seen his mother in negligee, he has seen his mother in bathing suits and so on, and I am not so sure that the human form as it is portrayed here is going to excite the average normal boy very much. In my experience it has not. These youngsters, to my mind, seem to take these things in their stride, the average normal boy.

1787

Q. That is, the average normal college boy? A. Yes.

Q. He is a little more sophisticated usually than other boys? A. Not necessarily. He may be pretty protected in lots of ways, but he has gone to prep school, he has been protected by his family pretty much. That is, he may not be as sophisticated as the high school youngster, as a matter of fact.

Q. But your experience with other boys, outside of college boys, is not very extensive, is it? A. Not as extensive as with college boys. I have seen a lot of them. I can't tell you how many.

1788

Q. But it would be comparatively a few as compared with the number of college boys you have seen? A. Oh, yes. I see a certain number of boys around 15 and 16 going to prep schools and so on.

Q. Now, take the October and November pictures on pages 106 and 107. Would you describe the October costume as a bathing costume? A. Well, you caught me on that other one. I don't know whether to or not. I should think so; I am not sure.



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Q: I see. It is quite a revealing costume, in that it follows the contours— A. I will tell you what it recalls to my mind. It recalls some of these professional swimmers.

1789.

Q. And the November costume, there again we don't seem to have anything holding the brassiere part of the costume up and it is cut very scantily around the upper part of the hips, isn't it, Doctor? A. Yes, but I don't know where you are going to stop on a lot of that stuff. Do you make it six inches above, or two inches, or what?

Q. I see. You wouldn't know whether it would make much difference to make that a few inches longer or a few inches shorter? A. No.

1790.

Q. A few inches shorter might reveal some of the pubic area, might it not? A. Not in the back. A few inches shorter in the front would expose the bosom, the abdomen, and perhaps some of the pubic hairs.

Q. Doctor, you don't think there is anything in these pictures that would especially stimulate the boys you have come in contact with in these colleges? A. Not as far as I know. I have never seen them stimulated, and in case histories none of them have ever referred to them.

Q. And that applies also to the December number on page 108? A. That is right. Now, of course, there is a little question of what you call stimulation, too. A lot of these youngsters, sure, they would say something about this and make remarks. Now, what kind of remark? Is it a remark that will hold for them or just a casual thing? We know that youngsters do say something about sex. They know a lot about sex in one sense of the word. They don't know the biology of it or the psychological factors involved or the sociological implications. They make quite a few remarks. They don't know all the implications. They might refer to these things as in some way stimulating

1791

*Clements C. Fry—for Respondent—Cross.*

1792 them. I don't know if you want to say stimulating to impure thoughts or what.

Q. Doctor, you made reference to some of these boys getting stimulated by things they see in the Bible. You wouldn't compare things you see in the Bible to these Varga girl pictures? A. I don't think we can compare them.

Q. That is, from a sex stimulating standpoint. A. I have seen boys stimulated by all kinds of things.

Q. But you wouldn't compare the sex stimulating qualities of things appearing in the Bible to things you have gone over in Esquire, would you? A. I don't quite understand.

1793 Q. You wouldn't compare the sex stimulating qualities of things in the Bible to things in Esquire? A. In terms of degree, do you mean, that the Bible would stimulate them more?

Q. Yes, or Esquire more. A. Or Esquire would stimulate the more?

I have seen youngsters who have gone and searched out certain little passages—

Q. We are not talking about the exceptional—

Mr. Bromley: Let him finish his answer.

Mr. Hassell: It is a waste of time.

1794 Chairman Myers: He has a right to finish his answer.

The Witness: I have seen them go to all kinds of literature to be stimulated, and I would say certain boys would go to these pictures to be stimulated. They will go to stories, and they go look at girls on the street, and they do all kinds of things to create within themselves a certain stimulation. Now, some of us may look upon these youngsters as ab-

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normal individuals, or, perhaps it may be a phase in their life that they go through and, later on, they drop this kind of thing. It may be, as I say, just a phase that they go through.

1795

Q. Have you finished? A. Yes.

Q. You want the Board to understand that you think the Bible is just as sexually stimulating as matters found in Esquire? A. Oh, no.

Q. I didn't think you did, Doctor. A. Oh, of course not.

Q. Would you compare the matter in Esquire to passages in Shakespeare—Hamlet, for instance? A. I can't recall Hamlet very well. If you will quote for me—

1796

Q. Hamlet has been referred to here. The Chairman can quote it to you, I imagine.

Chairman Myers: Doctor, do you recall the story of Abraham and his first wife who could have no children?

The Witness: Yes.

Chairman Myers: He got himself a handmaiden so he could have children.

The Witness: Yes.

Chairman Myers: Does that remind you of anything as to the Sultan pictures?

1797

The Witness: I don't think so.

Chairman Myers: And Abraham's godson, Jacob, worked seven years for the wife he thought he was going to get, Rachel, and his father-in-law gave him Leah, and he had to work seven more years to get Rachel and then he had two wives.

It looks like they used to sell women. And one picture in there is "Sold American." It looks like the only difference is they "Sold Israel."

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1798 *By Mr. Hassell:*

Q. Doctor, when you came along as a youngster was the Bible required reading in your family? A. Yes. I got \$1000 from my father for reading it.

Q. By reason of the fact that it was required reading you maybe never got much kick out of it, like I do. A. I enjoyed it. I went to a church school until I was 18. I don't know what kick you got out of it.

1799 Mr. Hassell: This would be a good time to adjourn.

Chairman Myers: The hearing will adjourn until 9:30 Monday morning.

(Whereupon, at 5:05 o'clock, p. m., the hearing in the above-entitled matter was adjourned until 9:30 o'clock, a. m., Monday, October 25, 1943.)

1800